

RESOLUTION NO. 2792

A RESOLUTION OF THE CITY OF SALISBURY TO PURCHASE IMPROVED REAL PROPERTY LOCATED AT 531 W. ISABELLA STREET FROM TWILLEY CONSTRUCTION, INC. FOR USE BY THE DEPARTMENT OF FIELD OPERATIONS.

WHEREAS, the seller, Twilley Construction, Inc., own improved residential property located at 531 W. Isabella Street, which was acquired by deed dated May 1, 1959 and recorded in the Wicomico County, Maryland Land Records in Liber J.W.T.S. No. 475, folio 52; and

WHEREAS, the City of Salisbury owns the property next to this property; and

WHEREAS, the Department of Field Operations utilizes the property owned by the City and desires to expand; and


WHEREAS, the City of Salisbury desires to purchase the property to further meet the needs of the Department of Field Operations; and

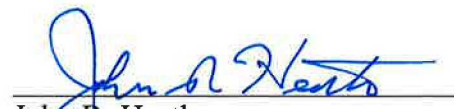
WHEREAS, the attached Contract of Sale for the property is authorized to be signed to purchase the property, which affords protection to the City if issues related to the title, property condition, etc. are found before the City is obligated to complete the purchase.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Salisbury, Maryland does hereby agree to purchase the 531 W. Isabella Street property from Twilley Construction, Inc. for \$40,000 in accordance with the terms contained in the attached Contract of Sale or such other terms approved by the City Solicitor. The Property shall be purchased with a clear title unless the City Council agrees otherwise once the title examination is complete.

THE ABOVE RESOLUTION was introduced, read and passed at the regular meeting of the Council of the City of Salisbury held on this 13th day of November, 2017 and is to become effective immediately upon adoption.

ATTEST:


Kimberly R. Nichols
CITY CLERK


John R. Heath
PRESIDENT, City Council

APPROVED by me this 15 day of NOVEMBER, 2017


Jacob R. Day
MAYOR, City of Salisbury



City of
Salisbury
Jacob R. Day, Mayor

MEMORANDUM

To: Julia Glanz, City Administrator
From: Tom Stevenson, Director of Field Operations
Subject: 531 W. Isabella Street (Property Acquisition)
Date: November 1, 2017

The City of Salisbury owns real property situated at 500 Mack Avenue. This location serves as headquarters for the Department of Field Operations. To meet future needs, it is essential to acquire contiguous property.

In an effort to accomplish this, attached please find a resolution that will have the effect of authorizing the Mayor to enter into a contract with Twilley Construction, Inc. to purchase 531 W. Isabella Street.

Unless you have any questions or require additional information, please forward this information to the Mayor and Council for consideration.

CONTRACT OF SALE

THIS CONTRACT OF SALE ("this Contract"), dated the ____ day of _____, 2017, between Twilley Construction, Inc., ("Seller"), whose address is PO Box 1591, Salisbury, MD 21802-1591 and City of Salisbury, Maryland ("Buyer"), whose address is Department of Internal Services, 125 N. Division Street, Salisbury, MD 21801.

1. *The Property.* Seller sells to Buyer, and Buyer purchases from Seller, the real property located in City of Salisbury, Wicomico County, Maryland, and known as 531 West Isabella Street, Salisbury, MD 21801, Map 0104, Grid 0019, Parcel 1860, together with all improvements and all the rights and appurtenances thereto. The property was acquired by the Seller by deed dated May 1, 1959 and is recorded in the Wicomico County land records, Liber J.W.T.S. No. 475, folio 52 and is hereinafter called the "Property."

2. *Purchase Price.* The purchase price for the Property is Forty Thousand Dollars (\$40,000.00), of which Buyer has paid One Thousand Dollars (\$1,000.00) at the signing hereof, the receipt of which Seller acknowledges. The balance of the purchase price shall be paid by Buyer to Seller in at Settlement.

3. *Time and Place of Settlement.* Unless the parties agree otherwise, Settlement shall take place at _____ a.m./p.m. on the ____ day of _____, 2017 at _____ (location).

4. *Deed to Property.* At Settlement, upon payment of the unpaid purchase money, a deed for the Property shall be executed at Buyer's expense by Seller. Seller shall, at Buyer's expense, prepare a special warranty deed.

5. *Possession.* Buyer shall be given possession of the Property at Settlement. Seller warrants that there are no other persons that are in current possession of the Property and that no other persons shall have rights to possession of the Property at the time of settlement.

6. *Recordation and Transfer Taxes.* All recordation taxes and state and local transfer taxes relating to the conveyance of the Property shall be paid as follows:

a) Buyer shall pay any state or county recordation and transfer taxes or fees or other costs imposed upon the recordation of the Deed.

b) Seller shall pay all taxes and fees relating to the recordation of any release of a mortgage, deed of trust, or other lien or encumbrance affecting the Property which is to be released or discharged at Closing.

7. *Real Estate Taxes.* Real estate taxes and similar public charges against the Property that are payable on an annual basis (including district, sanitary commission, or other benefit charges, assessments, liens, or encumbrances for sewer, water, drainage, or other public improvements

completed or commenced on or prior to the date hereof or subsequent thereto) shall be adjusted between the parties as of the date of Settlement and assumed and paid thereafter by Buyer.

8. *Risk of Loss.* The Property shall be held at the risk of Seller until Settlement hereunder.

7. *Buyer's Default.* If Buyer defaults in Buyer's obligation to purchase the Property, Seller shall have the right, at Seller's election, to retain all deposits paid hereunder as liquidated damages and not as a penalty, and upon such election, the parties shall be released from all further liability hereunder at law and in equity, except with respect to the provisions of this Contract which survive its termination.

8. *Real Estate Commission.* Each party warrants to the other that it has not used the services of a real estate broker or agent in connection with this transaction. Each party agrees to defend, indemnify, and hold the other party harmless for any claim for real estate commissions arising by reason of the indemnifying party's breach of this warranty. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property or the termination of this Contract.

9. *Representations of Seller.* The Seller makes the following representations and warranties to the Buyer, which shall survive the Settlement and the delivery of the deed and contract of sale for the Property to the Buyer.

A. The Property, including the location of any buildings thereon, is correctly described above.

B. At Settlement there will be no contracts affecting the Property or any part thereof. At Settlement there will be no contracts or agreements for the management of the Property, or any part thereof, and there will be no leasing commission due or owing in connection with any lease or on account of any tenancy or occupancy of any portion of the Property.

C. The Seller has no knowledge of any actions, suits or proceedings which have been instituted or threatened against or affecting the Property, at law or in equity, or before any federal, state or municipal governmental commission, board, bureau, agency or instrumentality which will materially adversely affect the value, occupancy, use or operation of the Property. The Seller will give the Buyer prompt written notice of any such action, suit or proceeding arising subsequent to the date hereof and prior to Settlement to the extent Seller acquires knowledge thereof.

D. The Seller has duly and validly authorized, executed and delivered this Contract, and neither the execution and delivery of this Contract nor its performance are restricted by or violate any contractual or other obligation of the Seller.

E. There are no assessments for public improvements against the Property which remain unpaid, including, without limitation, those for construction of sewer or water lines or mains, streets, sidewalks and/or curbs.

F. To the best of the Seller's knowledge, all improvements on the Property lie within the boundaries on the Property above named and do not encroach on any other property or violate any setback requirements.

G. The Seller agrees that, from the date of this Agreement to the Settlement date, it will:

(i) Operate the Property only in the ordinary and usual manner and that it will not enter into any new lease or any renewal or amendment of any of the Leases without the prior written consent of the Buyer;

(ii) Not become a party to any service contract or similar agreement with respect to or affecting the Property without the prior written consent of the Buyer;

(iii) Not cancel (except for nonpayment of rent or other material breach), modify, or amend any of the Leases or accept the surrender thereof, without the prior written consent of the Buyer;

(iv) Maintain, at its expense, all existing fire and extended coverage policies covering the Property and promptly cause the Buyer to be named as an additional insured thereunder as its interest may appear. The herein described property is to be held at the risk of Seller until legal title has passed. Buyer may acquire additional insurance if they wish;

(v) Use reasonable efforts to require any tenants occupying the Property to comply with all material obligations on their respective parts to be performed pursuant to their respective leases;

(vi) Correct all building code or other violations relating to the Property; and

(vii) Keep the Property in good condition and repair.

The consent of the Buyer to those matters specified in this paragraph 9.G. shall not be unreasonably withheld by Buyer.

10. Feasibility Studies.

10.1. *General.* Subject to the rights of any existing tenants, for a sixty (60) day period after the date of this Contract (the "Feasibility Period"), Buyer and its agents shall have the right to enter upon the Property at its sole risk for the purpose of inspecting the same and conducting surveys and other tests of surface and subsurface conditions, investigations, and feasibility studies. During such period the Seller shall furnish to the Buyer all information concerning the Property which the Buyer may reasonably request. The Buyer may, at its sole expense, make such engineering and other studies of the Property prior to the Settlement Date as it may deem necessary. Within a reasonable time after such entries Buyer shall restore the Property to its prior condition. Buyer shall defend, indemnify, and hold Seller harmless from and against any damage, liability, loss, deficiency, or expense (including attorneys' fees, court costs, and other expenses)

resulting from, and will pay Seller upon demand the full amount of any sum Seller may be or become obligated to pay on account of, all obligations, liabilities, claims, accounts, demands, liens, or encumbrances, which result from acts, conduct, omissions, contracts, agreements, or commitments of Buyer or its agents, in any way related to or arising from the exercise by Buyer of the rights herein granted to enter the Property and conduct tests thereon.

10.2. *Election to Proceed or Terminate.* If during the Feasibility Period Buyer shall determine, at its discretion, that the acquisition and development of the Property is not feasible, Buyer shall have the right, by written notice to Seller (the "Termination Notice"), to terminate this Contract prior to the expiration of the Feasibility Period. Upon receipt of the Termination Notice, this Contract shall terminate and thereupon the parties hereto shall be released from all further liability hereunder, at law and in equity, except as provided herein. If Buyer fails to give the Termination Notice on or before the expiration of the Feasibility Period, Buyer's right to terminate this Contract under this Section shall expire and Buyer shall thereafter be obligated to perform all of the terms, covenants, and provisions of this Contract to be performed by Buyer hereunder, including, without limitation, the obligation to consummate Settlement.

10.3. *Studies.* If Buyer terminates this Contract or defaults in its obligations hereunder, Buyer shall promptly deliver to Seller after the date of such termination or default, for no additional consideration, copies of all governmental permits and approvals, surveys, plats, soil tests, and engineering, environmental, architectural, and other reports, studies, and documents obtained by Buyer or its agents with respect to the Property.

11. *Delivery of Certain Materials to Buyer.* Promptly, but in no event later than _____ () days following the date hereof, the Seller shall deliver to the Buyer the following:

A. All surveys, engineering, environmental, or similar reports in the Seller's possession, custody, or control relating to the Property;

B. Copies of any Leases, together with a summary of each Lease specifying (i) the tenant's name, (ii) the premises leased, (iii) the lease term (including any renewal rights), (iv) the rent and the date through which rent has been paid, (v) the extent of tenant's responsibility for the payment of utility costs, taxes and expense escalations, (vi) a listing of all concessions, rebates, allowances or free rent given to the tenant, and (vii) the amount of any security deposit held by the Seller with respect to the lease;

C. Copies of all original building plans and specifications for the Property which are in the Seller's possession; and

D. A listing of the Personal Property, together with a listing of all liens or security interests of others with respect thereto.

12. *Miscellaneous Adjustments and Prorations.* The following adjustments and prorations shall be made between the parties on the Settlement Date. The provisions of paragraph 12.A. shall survive Settlement and the delivery of the deed and contract of sale for the Property to

the Buyer.

A. All utilities shall be adjusted and apportioned as of the Settlement Date.

13. *Title and Subdivision.*

13.1. *Title Report.* Seller shall obtain, at its expense, a title report covering the Property from a licensed title company selected by Seller. Seller shall provide the title report and certificate of title to Buyer no less than ten (100 days prior to Settlement. Buyer shall give written notice to Seller of any title exception that is not acceptable to Buyer (the "Title Defect"). If Buyer shall fail to provide such notice to Seller prior to Settlement, Buyer shall be considered to have waived its right to object to the Title Defect. Seller shall have thirty (30) days from the receipt of Buyer's notice within which to determine whether to cure or remove the Title Defect or to terminate this Contract. If Seller elects to cure or remove the Title Defect, Seller shall do so by giving Buyer written notice of the election within the thirty (30) day period, otherwise Seller shall be deemed to have elected to terminate this Contract.

If Seller elects to terminate this Contract, the deposit shall be returned to Buyer, whereupon this Contract shall become null and void and of no further force and effect at law or in equity. If Seller elects not to terminate this Contract, Seller shall be required to convey the Property to Buyer at Settlement, with clear title. Buyer shall receive clear title to the Property unless Buyer solely decides to go to Settlement without title issues being resolved to its satisfaction before Settlement.

13.2. *Ground Rent.* If the title report discloses that the Property is subject to payment of a ground rent pursuant to a perpetually renewable ground rent lease, Buyer may object to the fact that the Property is subject to a ground rent or, if Seller agrees to reduce the purchase price of the Property by an amount equal to the annual ground rent capitalized at the rate of ten percent (10%) proceed with the purchase. If the Property is subject to such a ground rent and Buyer proceeds with purchase of the Property, Buyer is hereby placed on notice in accordance with Md. Real Prop. Ann. Code § 14-117, as amended, (the "Code") that if the ground rent is not timely paid the effect may be (a) that the reversionary owner of the ground rent may bring an action of ejectment against the ground rent tenant under § 8-402(b), as amended, of the Code, and (b) as a result of the ejectment action, the reversionary owner of the ground rent may own the Property in fee, discharged from the lease.

13.3. *Subdivision.* If either Seller or Buyer prior to Settlement shall make a good faith determination that for Seller legally to convey the Property to Buyer, an approved subdivision plat of the Property must first be recorded among the Land Records of the County/City (the "Land Records"), then neither party shall be obligated to proceed to Settlement unless Buyer, at Buyer's expense, prior to Settlement, obtains all necessary governmental approvals and records the subdivision plat of the Property among the Land Records at or prior to Settlement. Seller and Buyer shall each cooperate with the other in filing any necessary applications, and in the processing of the subdivision plat before the appropriate governmental agencies. If a subdivision plat is required, Buyer shall have the right to postpone Settlement if additional time is required for Buyer to obtain the necessary governmental approvals.

14. *Environmental Matters.* To the best of the knowledge of the Seller, as of the date of this Contract and as of the date of Settlement, the Property (including land, surface water, ground water, and improvements) is now and will then be free of all contamination, including (i) any "hazardous waste," "underground storage tanks" "petroleum," "regulated substance," or "used oil" as defined by the Solid Waste Disposal Act of 1976 (42 U.S.C. § 6901, *et seq.*) as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*) as amended, or by any regulations promulgated thereunder (including, but not limited to, asbestos and radon); (iii) any "oil, petroleum products, and their byproducts" any "hazardous substance" as defined by the Maryland Environmental Code, Title 7, Subtitle 2, as amended, or by any regulations promulgated thereunder; (iv) any substance the presence of which on, in, or under the Property, is prohibited by any law similar to those set forth above; and (v) any other substance which by law, regulation, or ordinance requires special handling in its collection, storage, treatment, or disposal.

14.1. *Environmental Representations and Warranties.*

(a) Seller represents and warrants that (i) Seller has no knowledge of any Hazardous Material at, upon, under, or within the Property or, to the best of its knowledge, within any contiguous real estate; and (ii) Seller shall not cause or permit to exist any Hazardous Material at, upon, under, or within the Property until the Settlement date.

(b) Seller further represents and warrants that (i) neither Seller, nor any other party has been, is, or will be involved in operations at or near the Property, which operations could lead to (A) the imposition of liability under any Hazardous Material laws on Buyer, or any former owner of the Property; or (B) the creation of a lien on the Property under any Hazardous Material laws; and (ii) Seller has not permitted, and will not permit, any tenant or occupant of the Property to engage in any activity that could impose liability under any Hazardous Material laws on such tenant or occupant, on Seller or on any other owner of any of the Property.

14.2. *Environmental Covenants.*

(a) Seller shall comply strictly and in all respects with the requirements of any Hazardous Material laws and related regulations and shall notify Buyer immediately in the event of any discharge or discovery of any Hazardous Material at, upon, under, or within the Property before the Settlement date.

(b) Promptly upon the written request of Buyer, Seller shall provide Buyer with all past environmental site assessment or environmental audit reports to enable Buyer to assess the presence or absence of any Hazardous Material and the potential costs in connection with abatement, cleanup, or removal of any Hazardous Material found on, under, at, or within the Property.

14.3. *Indemnity.*

(a) Seller does hereby absolutely, unconditionally, and irrevocably indemnify and hold harmless Buyer from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Buyer, with respect to Seller's past use, or its tenants' use, during Seller's ownership of the Property for:

(i) any past discharge of Hazardous Material, the threat of a discharge of any Hazardous Material, or the presence of any Hazardous Material affecting the Property whether or not the same originates or emanates from the Property, including any loss of value of the Property as a result of any of the foregoing;

(ii) any costs of removal or remedial action incurred by the United States Government or any state, county, or municipal governmental authority, any response costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction, or loss, incurred pursuant to any Hazardous Material laws;

(iii) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at the Property; and

(iv) any other environmental matter affecting the Property within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state, county or municipal environmental agency.

(b) In the event of any discharge of Hazardous Material, the threat of a discharge of any Hazardous Material, or the presence of any Hazardous Material affecting the Property, whether or not the same originates or emanates from the Property, and/or if Seller shall fails to comply with any of the requirements of any Hazardous Material laws or related regulations or any other environmental law or regulation, Buyer may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Property and/or take any and all other actions as Buyer shall deem necessary or advisable in order to abate the discharge of any Hazardous Material, remove any Hazardous Material, or cure Seller's noncompliance.

(c) It is the intention of Seller that the provisions of this Agreement shall supersede any provisions herein, which in any way limit the personal liability of Seller and that Seller shall be personally liable for any obligations hereunder. All of the representations, warranties, covenants, and indemnities herein shall survive the transfer, if any, of any or all right, title, and interest in and to the Property by Seller.

(d) The term "Hazardous Material" means (i) any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302)

and amendments thereto and replacements therefor; or (ii) such substances, materials, or wastes as are regulated by the Resource Conservation and Recovery Act of 1976 or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, any amendments thereto or orders, regulations, directions, or requirements thereunder; or (iii) such hazardous or toxic substances, materials, or wastes that are or may become regulated under any other applicable county, municipal, state, or federal law, rule, ordinance, direction, or regulation.

15. Miscellaneous Provisions.

15.1. *Entire Agreement.* This Contract contains the final and entire agreement between the parties and neither they nor their agents shall be bound by any terms, conditions, or representations not herein written. However, the City of Salisbury Resolution approving the signing of this Contract may contain additional terms and conditions controlling the purchase of the Property.

15.2. *Joint and Several Liability.* If Buyer consists of more than one (1) person or entity, their liability under this Contract shall be both joint and several.

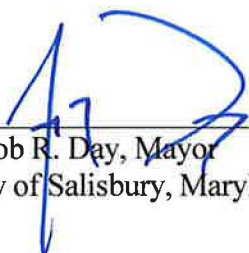
15.3. *Binding Agreement.* This Contract is binding on the parties and their personal representatives, successors, and assigns.

WITNESS the hands and seals of the parties.

WITNESS:

_____(SEAL)
Dale Dashiell, President
Twilley Construction, Inc, Seller

WITNESS:

_____(SEAL)
Jacob R. Day, Mayor
City of Salisbury, Maryland, Buyer