

INTRODUCED: February 11, 2019

AN ORDINANCE No. 2019-027

To declare a public necessity for and to authorize the acquisition of the real property known as 1617 Brook Road for the purpose of housing the City's parking enterprise operations.

\_\_\_\_\_  
Patron – Mayor Stoney

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: FEB 25 2019 AT 6 P.M.

WHEREAS, in the opinion of the Council of the City of Richmond, a public necessity exists for the acquisition of the real property known as 1617 Brook Road, with Tax Parcel No. N000-0476/006 in the 2019 records of the City Assessor, for the purpose of housing the City's parking enterprise operations;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That a public necessity exists for the acquisition of the real property known as 1617 Brook Road, with Tax Parcel No. N000-0476/006 in the 2019 records of the City Assessor, for the purpose of housing the City's parking enterprise operations.

AYES: 8 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: FEB 25 2019 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to acquire such real property from Ricky C. Walker for a purchase price not to exceed \$425,000.00 and to execute the deed and such other documents as may be necessary to complete the acquisition and acceptance of such real property, provided that the deed and such other documents must first be approved as to form by the City Attorney or the designee thereof and the purchase agreement for the purchase of this property shall be substantially in the form of the document entitled "Purchase & Sale Agreement" attached to this ordinance.

§ 3. This ordinance shall be in force and effect upon adoption.

JAN 17 2019



CITY OF RICHMOND

Office of the Chief Administrative Officer

INTRACITY CORRESPONDENCE

RECEIVED

JAN 31 2019

OFFICE OF CITY ATTORNEY

O&R REQUEST

DATE: January 15, 2019

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

*JL 1/29/19*

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

*SCG*

THROUGH: Lenora G. Reid, Deputy Chief Administrative Officer, Finance & Administration

*LGR*

THROUGH: Jay A. Brown, Director, Budget and Strategic Planning

*JAB*

THROUGH: Douglas C. Dunlap, Interim Deputy Chief Administrative Officer, Economic Development & Planning

*DCD*

THROUGH: Jane C. Ferrara, Interim Director, Economic Development

*JCF*

FROM: Paul A. McClellan, Programs Administrator - Real Estate Strategies, Economic Development

*PAM*

RE: To declare a public necessity for and to authorize the acquisition of 0.80 Acres of real property owned by Ricky C. Walker and known as 1617 Brook Road (Tax Parcel No. N0000476006) for the purpose of housing the City's Parking Enterprise operations.

ORD. OR RES. No: \_\_\_\_\_

PURPOSE: To declare a public necessity for and to authorize the acquisition of a 0.80 acre parcel of real property owned by Ricky C. Walker and known as 1617 Brook Road (Tax Parcel No. N0000476006) for the purpose of housing the City's Parking Enterprise operations pursuant to the terms of the Real Estate Purchase Agreement (the "Purchase Agreement") attached hereto.

REASON: Currently Parking Enterprise operations are housed in an old parking deck building at 101 N. 6<sup>th</sup> Street that was built in 1927. Because of the age of the building and the lack of preventative maintenance over the years this facility has numerous deficiencies rendering it

inadequate to meet the needs of the Parking Enterprise operations. A newer and larger facility is needed to meet such needs including a growing Parking Enterprise workforce of approximately 51 employees.

**RECOMMENDATION:** Approval is recommended by the City Administration

**BACKGROUND:**

The City's current Parking Enterprise on-street operations are located in extremely small office space at 101 N. 6<sup>th</sup> Street. Approximately 51 employees work out of the existing inadequate space. The Parking Enterprise on-street operations currently occupy approximately 1,176 sq. ft. of office space in an old parking deck building. Parking Enterprise on-street operations include the following functions: administrative offices, training, enforcement, collections, handheld charging stations and storage. The site to be acquired will also accommodate customer parking on the west parking lot as well as employee and City vehicle parking and equipment storage on the east parking lot.

After market research and evaluating other properties, the City has determined that the property located at 1617 Brook Road is the most suitable location for the Parking Enterprise on-street operations. The property is close to downtown, is in close proximity to parking enforcement routes and several public transportation routes are within walking distance of the site.

Under the terms of the Purchase Agreement, the City would purchase the 0.80 acre property including a 3,858 sq. ft. office building. The property will accommodate office space, a training room, handheld charging stations, multiple restrooms, changing rooms and storage functions as well as on-site parking vehicle storage and equipment storage to meet the Parking Enterprise program requirements; and the site access from Brook Road. The purchase price is \$425,000. The current assessed value of the existing 0.80 acre parcel including building and site improvements is \$312,000. The property was appraised on October 30, 2018 and the market value of the property was determined to be \$420,000.

**FISCAL IMPACT/COST:**

The purchase price for the property is \$425,000. In addition, the City's obligation to purchase the property is subject to appropriation of sufficient funds.

In addition to the purchase price, it is estimated that an additional \$50,000 will be needed to complete the appropriate environmental reports and closing documents including appraisal, site survey and title commitment. Additional one-time costs of approximately \$1,500 for moving expenses; telecom and technology reconfigurations; and furniture, fixtures, and equipment expenses are estimated at \$250,000.

**FISCAL IMPLICATIONS:**

Current market conditions offer opportunistic buys for existing buildings at a cost well below the cost of new construction. It is therefore recommended that the City proceed with acquiring the proposed property as opposed to leasing it.

**BUDGET AMENDMENT NECESSARY:** No

3. **Purchase Price.** The Purchase Price for the Property is \$425,000, payable as follows: Purchaser shall pay (i) ten thousand and no/100 Dollars (\$10,000.00) (the "Initial Deposit") within three (3) business days after the "Effective Date", and (ii) the balance of the Purchase Price in wired funds at Closing, as defined in paragraph 9 below, pursuant to wire instructions provided to Purchaser prior to Closing. The Initial Deposit together with all interest accrued thereon are collectively referred to as the "Deposit." The Deposit will be held in an interest-bearing FDIC insured account by Purchaser's title insurance company. The Deposit shall be applied to the Purchase Price at Closing if Closing occurs. If Closing does not occur, the Purchaser may terminate this Agreement.

4. **Delivery of Property Documents.** Within five (5) business days after the Effective Date, Seller shall deliver to Purchaser copies of any and all files, documents and other materials relating to the Property ("Property Documents"), including but not limited to:

- (i) Seller's most current title report or abstract on the Property, and copies of all leases, agreements, governmental plans, easements, restrictions, rights-of-way and other encumbrances affecting title;
- (ii) The latest as-built survey of the Property;
- (iii) Copies of engineering, structural, and mechanical studies and reports, physical inspection reports, environmental assessments and studies, and other reports or studies that have been prepared with respect to the Property; and
- (iv) Copies of all permits relating to the Property.

Seller shall additionally deliver to Purchaser any other information or documentation Purchaser may reasonably request at any time prior to Closing.

**REVENUE TO CITY:** None

**DESIRED EFFECTIVE DATE:** Upon Adoption

**REQUESTED INTRODUCTION DATE:** February 11, 2019

**CITY COUNCIL PUBLIC HEARING DATE:** February 25, 2019

**REQUESTED AGENDA:** Consent Agenda

**RECOMMENDED COUNCIL COMMITTEE:**

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** Planning Commission

**AFFECTED AGENCIES:** Mayor, Chief Administrative Officer, Department of Public Works, Office of the City Attorney, Department of Finance, Department of Budget and Strategic Planning, Department of Economic Development, Office of the City Assessor, Department of Public Utilities, Department of Planning and Development Review

**RELATIONSHIP TO EXISTING ORD. OR RES.:** None

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** Purchase & Sale Agreement

**STAFF:**

Lynne S. Lancaster  
Douglas C. Dunlap  
Jane C. Ferrara  
Paul A. McClellan

## PURCHASE & SALE AGREEMENT

THIS PURCHASE & SALE AGREEMENT ("Agreement") is made as of this 8<sup>th</sup> day of March, 2019, by and between Ricky C. Walker ("Seller"), and CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia ("Purchaser")

### RECITALS

A. Seller owns certain real property located in the City of Richmond, Virginia more commonly known as 1617 Brook Road, Tax Parcel No. N0000476006 containing 0.80 acres, together with any and all improvements, rights, easements, and appurtenances now or hereafter belonging thereto, all as more particularly described in Exhibit A attached to and made a part of this Agreement (collectively, the "Property").

B. Seller desires and agrees to sell the Property to Purchaser, and Purchaser desires and agrees to purchase the Property from Seller, pursuant to the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto covenant and agree as follows:

1. Recitals. The Recitals above are incorporated herein by reference.
2. Contract to Purchase and Sale; Effective Date. This Agreement shall constitute a binding contract, on the terms and conditions herein set forth, for the purchase and sale of the Property, together with all easements, rights and appurtenances thereto, all buildings and improvements now located thereon, and all of Seller's right, title, and interest in all public ways adjoining same. The Effective Date of this Agreement will be the date upon which Purchaser receives a fully signed copy of this Agreement from Seller is the "Effective Date."

3. **Purchase Price.** The Purchase Price for the Property is \$425,000, payable as follows: Purchaser shall pay (i) ten thousand and no/100 Dollars (\$10,000.00) (the "Initial Deposit") within three (3) business days after the "Effective Date", and (ii) the balance of the Purchase Price in wired funds at Closing, as defined in paragraph 9 below, pursuant to wire instructions provided to Purchaser prior to Closing. The Initial Deposit together with all interest accrued thereon are collectively referred to as the "Deposit." The Deposit will be held in an interest-bearing FDIC insured account by Purchaser's title insurance company. The Deposit shall be applied to the Purchase Price at Closing if Closing occurs. If Closing does not occur, the Purchaser may terminate this Agreement.

4. **Delivery of Property Documents.** Within five (5) business days after the Effective Date, Seller shall deliver to Purchaser copies of any and all files, documents and other materials relating to the Property ("Property Documents"), including but not limited to:

- (i) Seller's most current title report or abstract on the Property, and copies of all leases, agreements, governmental plans, easements, restrictions, rights-of-way and other encumbrances affecting title;
- (ii) The latest as-built survey of the Property;
- (iii) Copies of engineering, structural, and mechanical studies and reports, physical inspection reports, environmental assessments and studies, and other reports or studies that have been prepared with respect to the Property; and
- (iv) Copies of all permits relating to the Property.

Seller shall additionally deliver to Purchaser any other information or documentation Purchaser may reasonably request at any time prior to Closing.



5. Right of Entry; Feasibility Period. Commencing on the Effective Date, Purchaser and Purchaser's authorized representatives will have the right to enter the Property at any time for a period of one hundred eighty (180) days for the purpose of inspecting the Property and conducting surveys, studies, tests, evaluations, investigations, and other activities related to Purchaser's intended use and development of the Property (the "Feasibility Period"). Feasibility Period activities may include, but will not be limited to making inspections, appraisals, surveys (including the cutting of survey lines and putting up markers and driving stubs and stakes), site analysis, engineering studies, core sampling for engineering reports, and title, environmental, soil, drainage, utilities, and traffic studies, provided such activities do not result in any material change to the character of the Property. If the Feasibility Period terminates on a Saturday, Sunday or legal holiday, the Feasibility Period shall be deemed to terminate on the first business day thereafter. Purchaser may extend the Feasibility Period one time for an additional thirty (30) days on or before the final day of the Feasibility Period. The term Feasibility Period as used herein shall mean the Feasibility Period as extended, if extended. The Deposit shall remain fully refundable during the Feasibility Period as extended.

At any point during the Feasibility Period, Purchaser may notify Seller of the suitability of the Property for Purchaser's purposes, at which point the parties shall proceed to Closing.

In the event that Purchaser determines, for any reason and in its sole discretion, that all aspects of the Property are not suitable for Purchaser's purposes, Purchaser shall give written notice thereof to Seller within the Feasibility Period and may terminate this Agreement.

6. Title and Survey Matters. The Purchaser shall promptly request a title insurance commitment for the Property and a survey following execution of this Agreement. The Purchaser shall deliver copies of the commitment and survey to the Seller and inform the Seller in writing as to any survey or title defects or other objections regarding the Property disclosed by the survey or commitment that the Purchaser may be unwilling to accept. If Purchaser gives written notice of objection to the condition of title to the Property or to matters of survey, Seller shall have thirty (30) days following receipt of such notice to either (i) have any non-monetary

obligations satisfied and removed or (ii) give Purchaser written notice of Seller's inability or refusal to satisfy the non-monetary obligations. If any non-monetary obligation is not properly satisfied within such period, Purchaser may elect to either terminate this Agreement, extend the Seller's time to satisfy all outstanding non-monetary obligations, or accept and approve all such unsatisfied non-monetary obligations and to complete the purchase of the Property.

Notwithstanding anything contained in this Agreement to the contrary, Seller shall be obligated, at its sole cost and expense, to satisfy at or prior to the Closing all monetary encumbrances affecting the Property as evidenced by deeds of trust, tax liens, judgments, mechanics' liens, or other liens or charges in a fixed sum, and Seller authorizes the use of the Purchase Price or a portion thereof to pay and discharge the same at Closing. If Seller does not so satisfy all such monetary encumbrances, Purchaser may terminate this Agreement.

7. Conditions Precedent to Obligations of Purchaser. Purchaser's obligations in this Agreement are expressly conditioned upon satisfaction of each of the following conditions in the sole determination of Purchaser. If any one of the following conditions cannot be met before expiration of the Feasibility Period, Purchaser may terminate this Agreement.

- (a) Receipt of an inspection report related to the condition of the building and all other improvements located on the Property, including all electrical, heating and air conditioning, and other systems, prepared by a qualified building inspector selected by Purchaser at Purchaser's expense;
- (b) Receipt of a Phase I Environmental Assessment and Report ("Phase I Report"), as defined in paragraph 11(a)(iv) of this Agreement, conducted and prepared by an environmental engineering and inspection company ("Consultant") selected by Purchaser at Purchaser's expense, and other testing and reports as may be reasonably required by Purchaser or recommended in the Phase I Report;
- (c) Receipt of a report satisfactory to Purchaser of the results of testing of any underground

or above-ground storage tanks located on the Property;

- (d) Receipt of a satisfactory title commitment with all unacceptable title exceptions, encumbrances, and conditions, as deemed by Purchaser, removed or cured at Seller's cost;
- (c) Assignment by Seller of any and all maintenance, service, or other agreements and warranties related to the Property, its improvements, and equipment located thereon;
- (f) Approval and notice from the appropriate governmental authorities that all necessary permits and licenses required to authorize the construction, use, and operation of the Property for Purchaser's intended use all according to Purchaser's plans and specifications, and transfer of such permits and license by Seller to Purchaser. Seller agrees to execute all instruments and documents reasonably necessary to enable Purchaser to secure these authorizations; and
- (g) Passage of an ordinance by the Richmond City Council (the "Council") authorizing the City to enter into this Agreement and appropriations by the Council for Purchaser's purchase of the Property and all other costs assumed by Purchaser in this Agreement.

8. Conveyance of the Property to Purchaser. Seller shall convey the Property to Purchaser by General Warranty Deed (the "Deed") with modern English covenants of title. The Deed shall convey to Purchaser good and marketable fee simple title to the Property that is (i) free and clear of any and all liens and encumbrances other than easements, covenants, conditions and restrictions of record to the extent the same lawfully affect the Property and will not adversely affect Purchaser's intended use of the Property, and (ii) insurable at regular rates by any title insurance company licensed to issue such insurance in the Commonwealth of Virginia. .

Seller agrees to pay the expenses of preparing the Deed and of the recordation tax applicable to grantors. Purchaser will pay all other state and local taxes and fees charged in connection with recordation of the Deed, as well as title insurance expenses. All taxes and utility

bills, and any rents and interest, will be prorated between Seller and Purchaser as of the date of Closing.

Possession of the Property will be given to Purchaser at Closing, except that Purchaser will have access to the Property before Closing in accordance with section 5 of this Agreement.

9. Closing. Closing ("Closing") shall take place at the offices of Purchaser's attorney or at such other location as Purchaser may designate. Closing shall occur within fifteen (15) days' notice from Purchaser that it is ready to close. At Closing, Purchaser shall pay to Seller the Purchase Price, and Seller shall deliver to Purchaser, in a form satisfactory to Purchaser and Purchaser's title company, (i) the Deed, (ii) a signed owner's affidavit sufficient to induce the deletion from Purchaser's title commitment of exceptions for parties in possession and for mechanics' and materialmen's liens, (iii) an affidavit complying with the regulations promulgated under the Foreign Investment in Real Property Tax Act (FIRPTA), I.R.C. § 1445, in which Seller certifies, warrants, and represents that it is not a foreign entity subject to withholding under FIRPTA, (iv) an affidavit complying with the regulations under Executive Order 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001), in which Seller certifies, warrants, and represents that it is not listed on the Specially Designated Nationals and Blocked Persons list maintained by the Office of Foreign Asset Control, and (v) such additional documents and information as may be customarily required by title insurance companies or reasonably requested by Purchaser or Purchaser's title insurance company.

10. Risk of Loss. All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause shall remain with the Seller until Closing. Seller represents it will insure the Property, at Seller's cost, against such perils until Closing. In the event of any loss or damage to the Property by reason of fire or other casualty, Purchaser may, at its option, either (i) terminate this Agreement or (ii) waive the foregoing right to terminate this Agreement and purchase the Property as provided herein, in which event Seller, at Purchaser's option, shall either reduce the Purchase Price by an amount agreed upon by the parties and evidenced by an amendment to this Agreement, or assign to Purchaser its right to receive any and all insurance proceeds or other sums relating to the Property, as applicable.

11. **Environmental Inspection.**

(a) **Definitions.** As used in the Agreement, the following terms will have the following meanings:

- (i) **Contamination** means any Release of a Hazardous Substance, Petroleum Substance or Product, polychlorinated biphenyl (PCB), asbestos or asbestos containing material, radon gas, or other substance considered to be a contaminant by professionals in the field of environmental assessments under standard commercial practice;
- (ii) **Hazardous Substance** means those substances as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(14), and includes any material that is toxic, flammable, explosive, or corrosive as these terms are defined by CERCLA. Petroleum Substances or Products as defined below are excluded.
- (iii) **Petroleum Substance or Product** means any material containing refined or crude oil or any fraction thereof and includes natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas. Hazardous Substances as defined above are excluded.
- (iv) **Phase I and Phase II Environmental Assessment** have the meanings understood by professionals in the field of environmental assessments, which will include screening the Property for existing or threatened Contamination, be designed to avail Purchaser of certain defenses under applicable federal or state law, and include such other inquiries and examinations as are considered necessary or desirable under standard commercial practice at the time the assessment is conducted.

- (v) Release means such occurrences as defined by CERCLA, 42 U.S.C. § 9601(10), and includes any intentional or accidental discharging, spilling, leaking, pumping, pouring, injecting, escaping, leaching, dumping, disposing, or emitting into the environment.

(b) Phase I Environmental Assessment. If the Consultant recommends soil, water, or structural remediation, or further assessment activity, as a result of performing a Phase I Environmental Assessment, Purchaser may at its option either (i) terminate this Agreement and receive reimbursement of its costs incurred in connection with this Agreement, or (ii) extend the Feasibility Period for a reasonable period of time, in which event Seller will, at Seller's expense, diligently perform all actions reasonably necessary to fulfill Consultant's recommendations, including the performance of a Phase II Environmental Assessment and any corrective action recommended thereby. Seller's performance of such actions will be a condition precedent to Purchaser's obligations under this Agreement.

In the event Purchaser elects option (ii) and any corrective action as completed by Seller is unsatisfactory to Purchaser, Purchaser may terminate this Agreement and receive a reimbursement from Seller of its costs incurred in connection with this Agreement.

12. Representations and Warranties by Seller. Seller represents and warrants as of the date of this Agreement and as of the date of Closing that:

- (a) Seller has the right, title, and authority to enter into and to perform its obligations under this Agreement;
- (b) As of the Closing date, there will be no adverse or other parties in possession of the Property or any part thereof;
- (c) Seller is unaware of any fact or condition which would result in the termination of the current access from the Property to any presently existing highways and roads or to any existing sanitary sewer, storm sewer, or other utility facilities serving, adjoining or

situated on the Property;

- (d) Seller, to the best of its knowledge, is not a party to any litigation and is unaware of any pending or threatened litigation which arises from or affects the Property;
- (e) To the best of Seller's knowledge, there are no service or maintenance contracts that will affect the Property prior to Closing;
- (f) The entry into and performance of this Agreement by Seller will not breach any other agreement with any other party or create a violation of any applicable law, rule, or regulation;
- (g) To the best of Seller's knowledge, the Property and all structures and operations on the Property fully comply with federal, state and local environmental laws, regulations and requirements;
- (h) No Hazardous Substance, Petroleum Substance or Product, asbestos, asbestos containing material, or polychlorinated biphenyls (PCBs) are being manufactured, treated, stored, sold, or disposed on the Property, except (Not Applicable/ None);
- (i) After diligent inquiry, Seller has no knowledge of or reason to believe there exists on the Property any soil, surface water, groundwater, structural, or other Contamination or threat of Contamination;
- (j) After diligent inquiry, Seller has no reason to believe there exists on property adjacent to the Property any Contamination of, or threat of Contamination to, soil, surface water, groundwater, or otherwise;
- (k) To the best of Seller's knowledge, no environmental liens, restrictions, notifications, or conditions regarding the release, treatment, storage, or disposal of Hazardous Substances or Petroleum Products have been claimed or threatened relating to the Property;
- (l) At all times during its ownership of the Property, the Property has been used by Seller

and other occupants, if any, only as offices/meetings;

- (m) After diligent inquiry, Seller has no knowledge of any notice, claim or assertion by anyone that there are any underground or aboveground storage tanks on the Property;
- (n) After diligent inquiry, Seller has no knowledge of any past or present administrative proceedings, past or present litigation, or any notices, claims, or assertions of a violation of any environmental, health, or safety law or regulation affecting the Property;
- (o) There are no existing boundary, water, or drainage disputes of which the Seller has any knowledge;
- (p) There are no actions or proceedings threatened against the Seller to condemn all or any part of the Property;
- (q) To the best of Seller's knowledge, the Property and all improvements located on it are in compliance with all applicable federal, state, and local regulations.

13. **Indemnity.** Seller agrees to indemnify, defend, and hold harmless Purchaser and its officers, agents, and employees from any and all claims, liabilities, losses, damages, costs, or expenses, including without limitation, reasonable attorney, environmental consultant, engineering, and expert fees that Purchaser may incur because of Seller's action or inaction with regard to any of the following: (i) Seller's breach of any representation or warranty set forth in this Agreement, (ii) the presence of any Contamination on the Property, or (iii) the violation of any environmental, health, or safety law or regulation affecting the Property, unless caused solely by Purchaser.

14. **Condemnation.** In the event Seller or Purchaser becomes aware that the Property or any part of it is or will become the subject of a condemnation proceeding, whether for public or quasi-public use, the party will immediately give notice to the other of the proceeding. Upon the giving or receipt of such notice, Purchaser will have the option, by giving written notice to Seller within thirty (30) days following receipt of notice of a condemnation proceeding:



- (a) To permit Seller to negotiate with the condemning authority and receive the condemnation award, in which event Purchaser will take title to the remaining Property in accordance with the terms and conditions of this Agreement, and the Purchaser Price will be reduced by the amount received or receivable by Seller as compensation for that portion of the Property so taken;
- (b) To take title in accordance with the terms and conditions of this Agreement and negotiate with the condemning authority for the condemnation award and receive its benefits; or
- (c) To terminate this Agreement and receive a refund of the Deposit.

15. **Default by Seller.** The parties hereto acknowledge and agree that, in the event Seller fails to close the sale of the Property in accordance with this Agreement or otherwise fails to comply in any material respect with any of its obligations under this Agreement, Purchaser may, at its option, (i) terminate this Agreement, (ii) seek any and all other remedies available against Seller at law or in equity, including, without limitation, an action for specific performance of this Agreement by Seller.

These remedies are cumulative and non-exclusive and may be pursued at the option of Purchaser without a requirement of election of remedies.

16. **Termination.** In the event of termination of this Agreement, whether occurring by initiation of Purchaser or as otherwise provided in this Agreement, the Deposit shall be immediately returned in full without offset to Purchaser, the Purchaser shall not be considered to be in default, this Agreement shall become void, and both Seller and Purchaser shall thereafter be relieved from any and all liability under this Agreement, unless otherwise indicated by this Agreement. Purchaser may terminate this Agreement by written notice to Seller i) in the event of Seller's failure to meet its obligations as stated in this Agreement, or ii) as otherwise permitted by this Agreement.

17. **Assignment.** Seller agrees that Purchaser shall have the absolute right to assign this

Agreement and all of its rights hereunder at any time, without further consent of Seller, provided Purchaser gives Seller written notice of such assignment. Upon such assignment and notice thereof to Seller, Purchaser shall be relieved of and have no further obligations hereunder. This Agreement is not assignable by Seller without Purchaser's consent.

18. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and delivered in person or shall be sent by telecopier, express courier or by registered or certified mail, return receipt requested, postage prepaid, to the persons and at the addresses set forth below or to such other persons or addresses as the party entitled to such notice shall have specified by at least ten (10) days' prior notice given to the other party herein. Any notice given by telecopier shall simultaneously be given by at least one other permitted delivery method.

To Purchaser:  
Real Estate Strategies, Department of Economic Development  
1500 E. Main Street, Suite 400  
Richmond, VA 23219  
Facsimile No.: (804) 646-4351

With a copy to:

Law Department  
City of Richmond  
900 E. Broad Street, 4<sup>th</sup> Floor  
Richmond, VA 23219

(ii) To Seller:

With copy to:

17. Brokerage Commission. Seller and Purchaser each represents unto the other that no real estate broker, finder, agent or other person has acted for or on its behalf in bringing about this Agreement and that there are no fees or commissions payable to any other person or firm on account of this Agreement or the Closing contemplated herein. It is further agreed that should any claim for any commission or fee be asserted by any real estate broker, finder, agent or person as a result of this Agreement, or Closing pursuant hereto, the same shall be the full responsibility of the party whose actions resulted in such a claim for commission.

18. Survival. The provisions contained in this Agreement, including Seller's obligations and warranties and representations included in section 12 herein, will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

19. Miscellaneous.

(a) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(b) Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties with respect to the transactions contemplated hereby and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. There are no oral agreements, arrangements and understandings made in relation to or in connection with this Agreement.

(c) Amendments. This Agreement shall not be amended, supplemented or otherwise modified unless done by written agreement and executed by all of the parties.

(d) No Waiver. Neither any failure to exercise nor any delay in exercising any right, power or privilege under this Agreement by either party shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude the exercise of any other right, power or privilege. No waiver of any breach of any provision shall be

deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, nor shall any waiver be implied from any course of dealing.

- (c) Governing Law and Forum Choice. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia.
- (f) No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their permitted successors and assignees and shall not confer any rights or benefits on any other person.
- (g) Counterparts: Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures will be considered original signatures for the purpose of execution and enforcement of the rights delineated in this Agreement.
- (h) Time for Performance. TIME IS OF THE ESSENCE HEREUNDER.
- (i) Construction. The parties agree that the provisions of this Agreement will not be construed in favor of either party.
- (j) Further Assurances. Each party will execute and deliver to the other such documents and will take such other action as may be reasonably requested to consummate the transactions contemplated herein, to confirm or effectuate the sale of the Property pursuant to this Agreement, or to carry out the purposes of this Agreement.

**SIGNATURES ON FOLLOWING PAGES**

IN WITNESS WHEREOF, each of the parties hereto have affixed their signatures on the date(s) noted below:

SELLER: Rocky C. Walker  
By: Rocky C. Walker  
Date: 2/27/19

PURCHASER: CITY OF RICHMOND, a municipal corporation of Commonwealth of Virginia

By: Seleniauffable  
Title: CAO  
Date: 3/8/19

As authorized by Ordinance No. 2019-027  
adopted on Feb 25, 2019.

APPROVED AS TO FORM

[Signature]  
Assistant City Attorney

APPROVED AS TO TERMS:

[Signature]  
Economic Development - Real Estate Strategies

# Exhibit A

All that certain lot or parcel of land with improvements thereon in the City of Richmond, Virginia, known as No. 1617 Brook Road, containing 0.802 acres

and described as follows:

COMMENCING at a rod on the eastern side of Brook Road 1477.85 feet southwardly from Roberts Street; thence N. 72° 52' 15" E. 177.70 feet to a rod; thence N. 83° 11' 45" E. 22.65 feet to a rod; thence N. 81° 11' 00" E. 179.16 feet to a pipe; thence S. 1° 17' 30" W. 18.70 feet to a stone; thence S. 34° 08' 30" E. 95.94 feet to a rod; thence S. 83° 14' 00" W. 384.71 feet to a point; and thence N. 33° 46' 15" W. 73.27 feet to the beginning.

BEING the same real estate conveyed to Manhattan For Hire Car Corporation of Richmond, by deed from Curles Neck Dairy Incorporated, dated March 8, 1949 and recorded June 23, 1949 in the Clerk's Office of the Chancery Court of the City of Richmond, Virginia (now Circuit Court of the City of Richmond, Division I), in Deed Book 515-D, at page 167.