

RESOLUTION NO.: R-2018-106

Ratifying and Authorizing the City Manager to execute a Letter of Intent between the City of Columbia and the State of South Carolina and the City Manager's execution of a Purchase and Sale Agreement documents to consummate the purchase of 2221 Devine Street, Richland County TMS #11312-02-03 and 11312-02-09

BE IT RESOLVED by the Mayor and City Council this 20th day of November, 2018, that the City Manager's execution of said Letter of Intent between the City of Columbia and the State of South Carolina setting forth the terms for a Purchase and Sale Agreement for 2221 Devine Street, Richland County TMS #11312-02-03 and 11312-02-09, is hereby ratified; and,

BE IT FURTHER RESOLVED that the Mayor and Council hereby authorize the City Manager to execute a Purchase and Sale Agreement between the City of Columbia and the State of South Carolina for the purchase of 22212 Devine Street, Richland County TMS #11312-02-03 and 11312-02-09, and any other documents necessary, as approved by the City Attorney, and ratify any such documents executed, in order to consummate the purchase of the referenced property.

(Funding Source: Parking Fund Balance)

Requested by:

Assistant City Manager Gentry



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 11/20/2018
Final Reading: 11/20/2018

ORIGINAL
STAMPED IN RED

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY (the "Contract") is made and entered into by and between the State of South Carolina, by and through the Department of Administration (the "Seller"), and The City of Columbia (the "Buyer"). The effective date of this Contract shall be the latest date of a party's execution of this Contract ("Effective Date").

STATEMENT OF PURPOSE

Seller proposes to convey by quitclaim deed that certain tract of land and related improvements located in Richland County, South Carolina, as more particularly described below. Buyer desires to acquire from Seller the Property, as hereafter defined, upon the terms and conditions contained in this Contract. Seller thereafter intends to enter into one or more commercial lease (each or collectively "Commercial Lease") for Property occupants currently utilizing the Property. Seller is willing to sell and convey the Property, as hereafter defined, pursuant to the terms and conditions of this Contract.

NOW, THEREFORE, subject to the terms and conditions of this Contract, and in consideration of the premises and the respective agreements hereinafter set forth, Seller and Buyer agree as follows:

1. Description of Property. The property now owned by the Seller which is the subject of this Contract is as follows:

All that certain piece, parcel or lot of land, being approximately 2.83± acres, with all improvements thereon, located at 2221 Devine Street in the City of Columbia, County of Richland, State of South Carolina, and being further described on the tax maps of Richland County at TMS 11312-02-03&09, consisting of approximately 96,753 Sq. Ft. of commercial building and 24,200 Sq. Ft. of parking garage.

The real property described hereinabove includes all improvements and fixtures placed, constructed or installed on the Land ("Improvements"), and the real property and Improvements shall collectively be called the "Property".

2. Purchase Price. The purchase price (the "Purchase Price") to be paid by Buyer for the Property shall be Three Million Eight Hundred Thousand and No/100 Dollars (\$3,800,000.00). The Purchase Price shall be payable in certified U.S. funds as follows:

a. A good faith earnest money deposit and partial down payment of One Hundred Thousand and no/100 Dollars (\$100,000.00) (the "Deposit") which must be made payable to and received by the Seller within thirty (30) business days of the Effective Date will be applied to the Purchase Price at Closing.

b. The balance of the Purchase Price shall be payable by cashier's check, bank check or escrow account check at Closing, subject to price adjustments and prorations as hereinafter provided.

3. Survey. Buyer may cause a current or updated boundary and physical survey of the Property (the "Survey") to be prepared by a registered land surveyor acceptable to Buyer in accordance with such standards and requirements as Buyer shall reasonably request. Should Buyer elect to obtain a Survey, a description of the Property contained in the deed required by Paragraph 4 of this Contract shall be prepared from said Survey, as mutually agreeable to Buyer and Seller.

4. Title to the Property. At the Closing, Seller shall deliver to Buyer a quitclaim deed in form and content reasonably satisfactory to Buyer's counsel, conveying to Buyer its interest in the Land, its appurtenances and improvements, and subject to all rights-of-way, easements, restrictions of record and all other matters affecting title whether of record or not, and to any and all governmental laws and ordinances applicable to the Property. The Buyer shall provide to Seller in writing the name in which the deed shall be prepared at least ten (10) days prior to the Closing.

5. Inspections. Buyer shall have sixty (60) days from the Effective Date to undertake certain necessary inspections, market studies and other studies related to the Property (the "Inspection Period"). Seller agrees to provide Buyer and its agents, employees and representatives full access to the Property and to cooperate with purchaser in connection with such inspections. Buyer shall be responsible for any damage to the extent caused by the Buyer, its agents, contractors or invitees. Buyer will repair any damages caused by it or its agents, contractors or invitees to said Property. Property is being sold in "As-is" condition. Buyer shall have the right to terminate this Contract at any time during the Inspection Period for any reason whatsoever. If Buyer elects to terminate the Contract during the Inspection Period as provided herein, Seller shall return to Buyer the Deposit. Said Deposit shall become non-refundable at the expiration of the Inspection Period.

6. Closing Date. The closing of the sale and purchase of the Property (the "Closing") shall take place on or before thirty (30) days after the expiration of the Inspection Period, time being of the essence. The date of the Closing shall be referred to herein as the "Closing Date."

7. Closing Conditions. The obligations of Buyer under this Contract are in all respects conditioned upon and subject to there being no pending or proposed application for any rezoning or change in zoning not consented to by Buyer.

8. Closing Costs. Buyer shall pay for the preparation of the Deed. Buyer shall be responsible for all closing costs, transfer taxes associated with the transaction, deed stamps, recording and documentary fees, and any instruments to be recorded under the terms of this Contract with respect to the Property, as well as title examination fees and the title insurance premiums. Except as otherwise provided herein, each party shall bear its own expense or expenses, including its own attorneys' fees.

9. Settlement Adjustments. Unless otherwise specified in this Contract, all income, expenses and costs related to the Property shall be prorated as of the day the Closing actually occurs ("Closing Date") as follows:

a. Buyer shall pay any ad valorem property taxes respecting the Property for that portion of the calendar year from and after the Closing Date.

b. If there are meters on the Property measuring the consumption of water, gas or electric current, Seller shall, not more than one (1) day prior to the Closing Date, use its good faith efforts to cause such meters (for utilities for which Seller, and not tenants, are responsible) to be read, and shall pay promptly all utility bills for which Seller is liable upon receipt of a statement therefor. Buyer shall be liable for and shall pay all utility bills for services rendered after such meter readings and after the Closing Date.

10. Brokerage Commission.

a. Seller and Buyer mutually acknowledge that they have dealt with the State's broker in this transaction, and Buyer acknowledges it has been provided all necessary agency disclosure forms.

b. Seller acknowledges that, to the extent applicable, any and all fees due to Seller's broker are the sole responsibility of Seller.

c. Buyer acknowledges that they do not have a broker representing them in connection with this transaction.

11. Eminent Domain. If, prior to the Closing Date, all or any material part of the Property is taken by eminent domain or if condemnation proceedings are commenced, Buyer shall have the option, by giving written notice to Seller, to terminate this Contract and receive an immediate refund of the full amount of the Deposit. If Buyer does not so elect to terminate this Contract, the Contract shall remain in full force and effect, and Seller shall assign, transfer and set over to Buyer at the Closing all of Seller's right, title and interest in and to any awards that may be made for such taking.

12. Closing Documents.

a. At Closing, the Seller shall deliver to Buyer (or Closing Attorney, if any):

i. a duly executed and acknowledged quitclaim deed in recordable form conveying the Property satisfactory to Buyer;

ii. Affidavits required by the title company, as allowed per state law and in a form acceptable to Seller;

iii. Certificate of Non-Foreign Status and Residency Affidavit, as allowed per state law and in a form acceptable to Seller;

iv. Evidence of authority to sell the property;

v. Asbestos Report and any updates completed;

vi. CAFM Drawings;

vii. Historical O&M records as available;

viii. Floorplans; and

ix. Plat.

b. At Closing, Buyer shall deliver to Seller:

i. the cash portion of the Purchase Price as determined pursuant to Section 2 above; and

ii. such other documents and papers which may be necessary to the consummation of the transaction described in this Contract or as may be reasonably requested by Seller or Seller's counsel.

13. Escrow of Deposit. The Deposit shall be held in escrow (the "Escrow") by Seller subject to the terms and provisions of this Contract. At Closing, in accordance with the terms of this Contract, the full amount of the Deposit shall be retained by Seller as a portion of the Purchase Price.

14. Assignment. This Contract shall not be assigned by Seller. This Contract shall be freely assignable to an affiliate of Buyer without the consent of Seller. Any other assignment of this Contract by Buyer shall be subject to the consent of the Seller.

15. Default and Remedies.

a. In the event Seller defaults or fails to perform any of the conditions or obligations of Seller under this Contract or in the event any of the representations contained herein are not true and correct as of the date hereof and as of the Closing Date, Buyer, as its sole remedy, shall have the right to terminate this Contract (and receive a full refund of the Deposit) by giving written notice to Seller.

b. In the event of a default or breach thereof by Buyer of any of the covenants or conditions or obligations of Buyer under this Contract, Seller's remedy shall be to give written notice thereof to Buyer and to retain the Deposit as full liquidated damages, actual damages being difficult if not impossible to ascertain and the parties having made a bona fide effort to estimate Seller's damages. Notwithstanding the foregoing or anything herein to the contrary, Seller retains the right to enforce this Contract according to law.

16. Entry. Buyer shall have the right to enter upon the Property at reasonable times without Seller's prior consent after the Effective Date of this Contract for any purpose including but not limited to site planning, surveying and environmental inspections. At Closing, Seller shall provide Buyer with keys and alarm system codes (if applicable) for the Property. Buyer shall be responsible for any damage to the extent caused by the Buyer, its agents, contractors or invitees. Buyer will repair any damages caused by it or its agents, contractors or invitees to said Property.

17. The parties agree and understand this Contract is subject to and contingent upon all requisite approvals pursuant to South Carolina Code of Laws §1-11-65 and the Iran Divestment Act. In the event the Seller shall be unable to convey title satisfactory to Buyer in accordance with the terms of this Contract, the Seller will not be required to bring any action or proceeding or otherwise to incur any expense to render the title satisfactory. The sole obligation of the Seller shall be to cancel this Contract in which event the Deposit shall be returned to the Buyer.

18. Lease. Buyer, at Seller's sole and absolute discretion, agrees to enter into a Lease Agreement ("Lease Agreement") in a form substantially the same as Exhibit A attached hereto, for the Property with Seller for up to six (6) months from the date of closing at a rate of \$11.29/SF with Seller responsible for all operating costs with the exception of taxes and insurance. This Lease Agreement is intended to provide temporary office space to Seller while Seller arranges alternative space for the Property occupants, which will necessitate among other things, Seller or its tenants executing one or more Commercial Lease, obtaining requisite approvals for any such Commercial Lease(s), and coordinating the Property occupants move to the alternative space in accordance with the timeline set out in the appropriate Commercial Lease. Accordingly, Buyer understands and agrees that Seller's performance under this Contract is contingent upon, and subject to, the Seller obtaining all requisite approvals for the Lease Agreement and the Commercial Lease.

19. Miscellaneous.

a. Notices. Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been given when (i) deposited in Federal Express (or any other national "next day" delivery service); (ii) deposited in the United States mail via registered or certified mail, postage prepaid, return receipt requested; or (iii) sent via electronic mail to the party's address specified in this Contract if sent during normal business hours on a Business Day (or on the next Business Day if sent via electronic mail after the close of normal business hours or on a non-Business Day). When a party sends notice via electronic mail they shall promptly thereafter send a hard copy via either option (i) or (ii) as provided herein and addressed as follows:

SELLER: State of South Carolina
c/o Department of Administration
1200 Senate Street, Suite 460
Columbia, SC 29201
Attention: Real Property Services
Email: Linda.Gordon@admin.sc.gov

BUYER: The City of Columbia
c/o City Manager
Post Office Box 147
Columbia, SC 29217
Attention: City Manager
Email:

Either party may, from time to time, by notice as herein provided, designate a different address to which notice to it shall be sent.

b. Applicable Law. This Contract shall be governed by and construed in accordance with the laws of the State of South Carolina.

c. Entire Agreement. This Contract and the Exhibit(s) hereto contain the entire understanding and agreement by and between the parties and all prior or contemporaneous oral or written agreements or instruments are merged herein, and no amendment to this Contract shall be effective unless the same is in writing and signed by the parties hereto.

d. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.

e. Saturdays, Sundays, Holidays. If any date called for under this Contract falls on a Saturday, Sunday or legal holiday observed by either the State of South Carolina or national banks in Columbia, South Carolina ("non-Business Day"), such date shall be extended to the next day not falling on a Saturday, Sunday or legal holiday observed by either the State of South Carolina or national banks in Columbia, South Carolina ("Business Day").

f. Captions and Headings. The captions and headings throughout this Contract are for convenience and reference only, and the words contained therein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Contract.

g. No Offer. The parties agree that the submission of this Contract for review or execution by one party to the other does not constitute an offer to sell or purchase the Property, and that this Contract shall not be valid, binding or enforceable until duly and fully executed by all parties hereto.

h. Authority. All signatories to this Contract have the full power and authority to enter into this Contract.

i. The execution, delivery and performance of this Contract will not result in the breach of or constitute a default under the provisions of any agreement to which the Buyer or Seller is a party, or by which it or its property is bound or affected.

j. Any prior agreement between the parties or that their respective affiliates with respect subject to the subject matter hereof shall be of no further force and effect, and to the extent of any such prior agreements this Contract shall be deemed a novation, good and sufficient consideration of which is acknowledged by all respected affiliates.

k. This Contract may be executed in counterparts, all of which together shall comprise one and the same instrument.

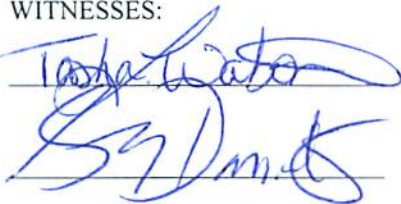
l. This Contract cannot be altered, amended, changed or modified in any respect or particular unless each such alteration, amendment, change or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and signed and delivered by each party.

m. Time is of the essence in all provisions of this Contract.

19. Closing Attorney. Seller is not required to provide an attorney to Buyer for this transaction. However, in the event Buyer chooses to retain a closing attorney, ("Closing Attorney") Buyer will identify the Closing Attorney to Seller in writing at least ten (10) days prior to the Closing. The Buyer and Seller acknowledge that there may exist a potential conflict of interest in the representation of both Buyer and Seller by the Closing Attorney, in closing this transaction if the Seller is not represented by independent counsel. In such event, both Buyer and Seller agree to sign a Conflict of Interest Disclosure to allow the Closing Attorney to close the within transaction.

IN WITNESS WHEREOF, the undersigned have duly executed this Contract effective as of the date of the last signature hereinbelow.

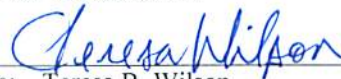
WITNESSES:



WITNESSES:

BUYER:

CITY OF COLUMBIA

BY: 
Name: Teresa B. Wilson
Title: City Manager
Date: 11/30/2018

SELLER:

STATE OF SOUTH CAROLINA
BY AND THROUGH THE
DEPARTMENT OF ADMINISTRATION
By: Real Property Services
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM


Legal Department City of Columbia, SC