

RESOLUTION NO. 115 OF 2017

Moved by: Wanda R. J. Williams

A Resolution authorizing the City of Harrisburg to acquire by agreement title to of certain real property in lieu of eminent domain proceedings.

WHEREAS, the City's Department of Public Works was established by Ordinance No. 9-1996 and is codified at Chapter 2-301.1 of the City Code; and

WHEREAS, the purpose of the Department of Public works is to maintain public infrastructure, manage municipal solid waste collection and ensure a healthy, safe and natural environment for the residents of the City; and

WHEREAS, the City relocated its Department of Public Works to a facility in 2014 due to the sale of the Harrisburg Incinerator to the Lancaster County Solid Waste Management Authority; and

WHEREAS, the City's public works facility is currently located at a former commercial garage/auto dealership building at 1812-1820 Paxton St., Harrisburg, PA; and

WHEREAS, the owner of 1812-1820 Paxton St., Harrisburg, PA, Tax Parcel# 01-009-020-000-0000 ("Property") is MEB Partners, L.P.; and

WHEREAS, after conducting a search for other suitable property within the City to operate as a public works facility, the City determined it will be necessary City to acquire the real property at current location and certain adjacent improved parcels for the construction, erection and extension of a permanent public works facility; and

WHEREAS, in lieu of acquiring certain properties through eminent domain, the City negotiated the purchase of two (2) of the adjacent parcels, including improvements thereon, more specifically identified as Tax Parcel Nos. 01-009-003-000-0000 and 01-009-

009-000-0000, respectively having aa Street address of 850 South 19th Street and. 902 South 19th Street, the form of the proposed agreements being attached hereto and respectively marked as Exhibits A and B; and

WHEREAS, the City has agreed to acquire the property at 850 South 19th Street for the sum of \$60,000.00; and

WHEREAS, the City has agreed to acquire the property at 902 South 19th Street for the sum of \$55,620.00; and

WHEREAS, each property will be separately acquired through an Agreement of Sale of Real Estate and Stipulation for Payment of Final Condemnation, consistent with the authorizing provisions of the Third Class City Code, 11 P.S. §§ 12801, *et seq.*, and the Eminent Domain Code, 26 P.S. §§ 101, *et seq.*

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HARRISBURG, AND IT IS HEREBY ORDAINED BY AUTHORITY OF THE SAME, as follows:

BE IT RESOLVED that the City shall acquire fee simple title to each of the aforesaid parcels, with an additional provision for a life estate for the long-time owner of 850 South 19th Street property.

BE IT FURTHER RESOLVED that the Mayor, Controller < City Solicitor and other appropriate City officials are authorized to take all steps necessary to effectuate the purpose of this Resolution.

Secoded by: _____

Ben J. Allan

PASSED the City Council December 19, 2017

Wanda R. W. Williams

President of City Council

Attest

[Signature]
City Clerk

YEAS		NAYS
<input checked="" type="checkbox"/>	MR. ALLATT	
<input checked="" type="checkbox"/>	MS. DANIELS	
<input checked="" type="checkbox"/>	MS. GREEN	
<input checked="" type="checkbox"/>	MR. JOHNSON	
<input checked="" type="checkbox"/>	MR. MADSEN	
<input checked="" type="checkbox"/>	MR. MAJORS	
<input checked="" type="checkbox"/>	MS. WILLIAMS	
Yeas	<u>7</u>	
Nays	<u>0</u>	

E x h i b i t “A”

**Agreement for the Sale of Real Estate and
Stipulation for Payment of Final Condemnation**

This Agreement for the sale of real estate (the "Agreement") made and entered into as of this date _____ by and **City of Harrisburg**, (the "**Buyer**") and **Nancy Fulginiti** (the "**Seller**").

BACKGROUND

- The City of Harrisburg is a city of the third class with the power to acquire land through eminent domain procedures.
- Seller is an individual owning real property within the City of Harrisburg.
- The City of Harrisburg identified numerous tracts of real property necessary for public use.
- Such land includes Seller's real property.
- Buyer and Seller discussed and agreed to a purchase price for Seller's real property.
- Said purchase price shall be in lieu of eminent domain proceedings.
- Upon payment of the purchase price, Seller agrees that they received just compensation for their real property, as further set forth below.

Accordingly, the parties agree as follows:

SECTION 1 – PROPERTY AND PURCHASE PRICE

- 1.1 Property.** Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Sellers, upon the terms and conditions set forth herein, all right, title, and interest owned by Sellers in that certain parcel of real property

located at **850 S. 19th Street, Harrisburg, Dauphin County, Pennsylvania 17104**, further identified as **Parcel # 01-009-003-000-0000**, together with all improvements, rights, easements, licenses and appurtenances thereon or pertaining thereto (collectively, the "Property").

- 1.2 Purchase Price.** The purchase price of the Property shall be **Sixty Thousand (\$60,000)** (the "Purchase Price"), to be paid at the time of closing.

SECTION 2 – STIPULATION FOR PAYMENT OF FINAL CONDEMNATION

- 2.1 Eminent Domain Proceedings.** The Property is the subject of Eminent Domain Proceedings pursuant to City of Harrisburg Resolution No. _____, approved _____ (date), and which taking was effected on _____ (date), pursuant to the Eminent Domain Code, as amended, 26 Pa. Stat. Ann. §§ 1-101, et seq. ("Code"):
- 2.2 Full and Final Compensation.** The Purchase Price set forth shall constitute full and final compensation for and shall be in full settlement of any and all claims for general and special damages under the Eminent Domain Code in connection with the condemnation of the Property, including but not limited to, actual losses for personal property, moving, search and other related expenses, and statutory attorneys fees.
- 2.3 Fair and Just.** Seller agrees that this Purchase Price is fair and just compensation.
- 2.4 No Further Obligation.** Upon receipt of this Purchase Price, all parties agree and stipulate that no additional payments are due, and no party has any further duty, obligation, or responsibility to the other part, unless set forth further below.
- 2.5 Survival.** This stipulation shall survive closing and remain binding on all parties.

SECTION 3 – CLOSING and CONVEYANCE OF TITLE

- 3.1 Closing.** This Agreement shall be consummated and the purchase and sale hereunder concluded at a closing which shall take place on or before December 30, 2017, at a place to be mutually agreed upon.

- 3.2 Real Estate Taxes.** All real estate taxes shall be pro-rated as of the date of closing. Buyer shall be responsible for real estate taxes after the date of closing.
- 3.3 Sewer bills, trash, utilities, and all other municipal fees.** All utilities and other municipal fees due are the responsibility of the Seller.
- 3.4 Transfer Taxes.** Buyer agrees to pay all transfer taxes associated with this transaction.
- 3.5 Conveyance and Delivery of Title.** Seller represents and warrants that they possess marketable title in the Property, and that they will convey to Buyer at Closing all right, title, and interest to the Property by Special Warranty Deed.
- 3.6 Reservation of Life Estate.** Seller elects to reserve a life estate in the property, and said life estate shall be included as a reservation in the Special Warranty Deed conveying title. No rent shall be owed by Seller.
- 3.7 Termination of Life Estate.** At the time Seller's life estate ends Seller or Seller's Representatives shall have sixty (60) days following the termination of the life estate to remove Seller's personal property. Property shall be left broom clean by Seller or Seller's representatives at that time.
- 3.8 Duty to Maintain.** Seller agrees to maintain the property during her life estate tenancy. Buyer has no responsibility to insure or maintain the property during this life tenancy. Seller agrees not to seek the assistance or hold Buyer responsible for repairs, maintenance, or any form of contribution towards the property.
- 3.9 Risk of Loss.** Seller assumes the risk of loss or damage due to negligence, willful action or omission, or fire or other casualty prior to settlement. In the event of damage or loss which is not repaired or replaced prior to settlement, Buyer shall have the option of canceling this Agreement and receiving a refund of all monies paid on account of the Purchase Price, or of accepting the property in its then condition together with the proceeds of any insurance recovery obtainable by Seller for damages to the premises.

SECTION 4 – REPRESENTATIONS

- 4.1 Notices and Assessments.** Seller represents that as of the date of this Agreement, no assessments have been made against the property which remain unpaid and no notices have been served upon Seller for damages to the premises.
- 4.2 As-Is Purchase.** Seller represents that all known property defects are disclosed to Buyer, and Buyer acknowledges that they inspected the property and is purchasing same in “as is” condition. Buyer acknowledges receipt of Seller’s Disclosure Statement.
- 4.3 Confidentiality.** Seller and Seller’s Representatives, including, but not limited to Mr. S. Bowker, agree to sign a confidentiality agreement whereby they agree not to release, discuss, disclose, or otherwise share any information discussed or shared during negotiations prior to, during, or after the signing of this Agreement and through the date of closing. This paragraph and subsequent confidentiality agreement to be signed shall survive closing.

SECTION 5 – MISCELLANEOUS

- 5.1 Brokers.** Buyer and Seller each represent and warrant to the other that they have had no dealings, negotiations, or consultations with any brokers or finders in connection with this transaction, except NAI CIR (the “Broker”). Buyer shall be responsible for the Broker’s commissions, subject to a separate agreement.
- 5.2 Modifications.** This Agreement may be modified by an instrument in writing duly executed by the Seller and Buyer or their successors or assigns.
- 5.3 Notices.** All notices must be in writing and sent to parties at the following locations by certified first class mail:

City of Harrisburg: City of Harrisburg – City Solicitor
10 N. 2nd Street
Suite 403
Harrisburg, PA 17101

Nancy Fulginiti:

Nancy Fulginiti
850 S. 19th Street
Harrisburg, PA 17104

- 5.4 Entire Agreement; Severability.** This Agreement represents the entire agreement between the parties and any and all prior negotiations and agreements, written or oral are merged into this Agreement. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable because it conflicts with any other provision or provisions hereof or any Constitution or statute or rule of public policy, or for any other case or circumstances, such inoperability or unenforceability shall not be deemed to render this Agreement inoperative or unenforceable or to render any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.
- 5.5 Successors and Assigns.** The covenants and agreements in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, their heirs, distributees, executors, administrators, legal representatives, permitted assigns and successors in interest.
- 5.6 Applicable Law.** This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Pennsylvania. This Agreement shall be interpreted without regards to any presumption or rule requiring construction against the party who caused it to be drafted.
- 5.7 Counterparts.** This Agreement may be simultaneously executed in several identical counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

----- SIGNATURE PAGE TO FOLLOW -----

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first hereinabove written.

Seller

By: _____

Nancy Fulginiti

Buyer

By: _____

**The City of Harrisburg
By Mayor, Eric Papenfuse**

ACKNOWLEDGMENT

Commonwealth/State of Pennsylvania :
County of Dauphin : ss

On this, the ____ day of _____, _____, before me a notary public, the undersigned officer, personally appeared **Eric Papenfuse**, who acknowledged himself to be the Mayor of **THE CITY OF HARRISBURG**, and that he as such Mayor, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ACKNOWLEDGMENT

Commonwealth/State of Pennsylvania :
County of Dauphin : ss

On this, the ____ day of ____, ____, before me a notary public, the undersigned officer, personally appeared **Charles Debrunner**, who acknowledged himself to be the City Controller of **THE CITY OF HARRISBURG**, and that he as such City Controller, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ACKNOWLEDGMENT

Commonwealth/State of Pennsylvania :
County of Dauphin : ss

On this, the ____ day of ____, ____, before me a notary public, the undersigned officer, personally appeared **Nancy Fulginiti**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

E x h i b i t “B”

**Agreement for the Sale of Real Estate and
Stipulation for Payment of Final Condemnation**

This Agreement for the sale of real estate (the "Agreement") made and entered into as of this date _____ by and City of Harrisburg, (the "Buyer") and Stephen M. Kozlosky (the "Seller").

BACKGROUND

- The City of Harrisburg is a city of the third class with the power to acquire land through eminent domain procedures.
- Seller is an individual owning real property within the City of Harrisburg.
- The City of Harrisburg identified numerous tracts of real property necessary for public use.
- Such land includes Seller's real property.
- Buyer and Seller discussed and agreed to a purchase price for Seller's real property.
- Said purchase price shall be in lieu of eminent domain proceedings.
- Upon payment of the purchase price, Seller agrees that they received just compensation for their real property, as further set forth below.

Accordingly, the parties agree as follows:

SECTION 1 – PROPERTY AND PURCHASE PRICE

- 1.1 Property.** Sellers hereby agree to sell and convey to Buyer, and Buyer hereby agree to purchase from Sellers, upon the terms and conditions set forth herein, all right, title, and interest owned by Sellers in that certain parcel of real property

located at **902 S. 19th Street, Harrisburg, Dauphin County, Pennsylvania 17104**, further identified as **Tax Parcel# 01-009-009-000-0000**, together with all improvements, rights, easements, licenses and appurtenances thereon or pertaining thereto (collectively, the "Property").

- 1.2 Purchase Price.** The purchase price of the Property shall be **Fifty-Five Thousand Six Hundred Twenty Dollars (\$55,620)** (the "Purchase Price"), to be paid in the following manner:

SECTION 2 – STIPULATION FOR PAYMENT OF FINAL CONDEMNATION

- 2.1 Eminent Domain Proceedings.** The Property is the subject of Eminent Domain Proceedings pursuant to City of Harrisburg Resolution No. _____, approved _____ (date), and which taking was effected on _____ (date), pursuant to the Eminent Domain Code, as amended, 26 Pa. Stat. Ann. §§ 1-101, et seq. ("Code"):
- 2.2 Full and Final Compensation.** The Purchase Price set forth shall constitute full and final compensation for and shall be in full settlement of any and all claims for general and special damages under the Eminent Domain Code in connection with the condemnation of the Property, including but not limited to, actual losses for personal property, moving, search and other related expenses, and statutory attorneys fees.
- 2.3 Fair and Just.** Seller agrees that this Purchase Price is fair and just compensation.
- 2.4 No Further Obligation.** Upon receipt of this Purchase Price, all parties agree and stipulate that no additional payments are due, and no party has any further duty, obligation, or responsibility to the other part, unless set forth further below.
- 2.5 Survival.** This stipulation shall survive closing and remain binding on all parties.

SECTION 3 – CLOSING and CONVEYANCE OF TITLE

- 3.1 Closing.** This Agreement shall be consummated and the purchase and sale hereunder concluded at a closing which shall take place on or before December 18, 2018, at a place to be mutually agreed upon.
- 3.2 Conveyance and Delivery of Title.** Seller represents and warrants that they possess marketable title in the Property, and that they will convey to Buyer at Closing all right, title, and interest to the Property by Special Warranty Deed.
- 3.3 Possession.** Possession will be delivered to Buyer at the date and time of closing.
- 3.4 Real Estate Taxes, sewer bills, trash, utilities, and all other municipal fees.** All real estate taxes, utilities, and other municipal fees due are the responsibility of the Seller until the closing date.
- 3.5 Transfer Taxes.** Buyer and Seller agree to evenly split all transfer taxes associated with this transaction.
- 3.6 Moving Costs.** Buyer agrees to pay Seller **Two Thousand Dollars (\$2,000)** on the date of closing to be used for moving costs. This sum is separate and not included in the Purchase Price. Seller will make all efforts to remove all personal items, however, he may leave behind those items he cannot sell or take with him.
- 3.7 Duty to Not Commit Waste.** Seller agrees not commit waste on the property at any time until closing. Seller may elect to make repairs such as leaks in the roof with the understanding that doing so in no way obligates Buyer to contribute to the repairs, or ay an increased Purchase Price. Buyer has no responsibility to insure or maintain the property up until the date of closing. Seller agrees not to seek the assistance or hold Buyer responsible for repairs, maintenance, or any form of contribution towards the property.
- 3.8 Risk of Loss.** Seller assumes the risk of loss or damage due to negligence, willful action or omission, or fire or other casualty prior to settlement. Seller agrees to obtain and keep current an insurance policy covering the value of the property and

all clean-up costs should a fire or other event occur. In the event of damage or loss which is not repaired or replaced prior to settlement, Buyer shall have the option of canceling this Agreement and receiving a refund of all monies paid on account of the Purchase Price, or of accepting the property in its then condition together with the proceeds of any insurance recovery obtainable by Seller for damages to the premises.

SECTION 4 - REPRESENTATIONS

- 4.1 Notices and Assessments.** Seller represents that as of the date of this Agreement, no assessments have been made against the property which remain unpaid and no notices have been served upon Seller for damages to the premises.
- 4.2 Pre-Settlement Inspection.** Buyer reserves the right to make a pre-settlement inspection of the subject premises.
- 4.3 As-Is Purchase.** Seller represents that all known property defects are disclosed to Buyer, and Buyer acknowledges that they inspected the property and is purchasing same in "as is" condition. Buyer acknowledges receipt of Seller's Disclosure Statement.
- 4.4 Confidentiality.** Seller and Seller's Representatives, including, but not limited to, Seller's three sisters, agree to sign a confidentiality agreement whereby they agree not to release, discuss, disclose, or otherwise share any information discussed or shared during negotiations prior to, during, or after the signing of this Agreement and through the date of closing. This paragraph and subsequent confidentiality agreement to be signed shall survive closing.

SECTION 5 – MISCELLANEOUS

- 5.1 Brokers.** Buyer and Seller each represent and warrant to the other that they have had no dealings, negotiations, or consultations with any brokers or finders in connection with this transaction, except NAI CIR (the "Broker"). Buyer shall be responsible for the Broker's commissions, subject to a separate agreement.

5.2 Modifications. This Agreement may be modified by an instrument in writing duly executed by the Seller and Buyer or their successors or assigns.

5.3 Notices. All notices must be in writing and sent to parties at the following locations by certified first class mail:

City of Harrisburg: City of Harrisburg – City Solicitor
10 N. 2nd Street
Suite 403
Harrisburg, PA 17101

Stephen M. Kozlosky: Stephen M. Kozlosky
902 S. 19th Street
Harrisburg, PA 17104

5.4 Entire Agreement; Severability. This Agreement represents the entire agreement between the parties and any and all prior negotiations and agreements, written or oral are merged into this Agreement. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable because it conflicts with any other provision or provisions hereof or any Constitution or statute or rule of public policy, or for any other case or circumstances, such inoperability or unenforceability shall not be deemed to render this Agreement inoperative or unenforceable or to render any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

5.5 Successors and Assigns. The covenants and agreements in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, their heirs, distributees, executors, administrators, legal representatives, permitted assigns and successors in interest.

5.6 Applicable Law. This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Pennsylvania. This Agreement shall be interpreted without regards to any presumption or rule requiring construction against the party who caused it to be drafted.

5.7 Counterparts. This Agreement may be simultaneously executed in several identical counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first hereinabove written.

Seller

By: _____

Stephen M. Kozlosky

Buyer

By: _____

**The City of Harrisburg
By Mayor, Eric Papenfuse**

ACKNOWLEDGMENT

Commonwealth/State of Pennsylvania :
County of Dauphin : ss

On this, the ____ day of _____, _____, before me a notary public, the undersigned officer, personally appeared **Eric Papenfuse**, who acknowledged himself to be the Mayor of **THE CITY OF HARRISBURG**, and that he as such Mayor, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ACKNOWLEDGMENT

Commonwealth/State of Pennsylvania :
County of Dauphin : ss

On this, the ____ day of _____, _____, before me a notary public, the undersigned officer, personally appeared **Charles Debrunner**, who acknowledged himself to be the City Controller of **THE CITY OF HARRISBURG**, and that he as such City Controller, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

ACKNOWLEDGMENT

Commonwealth/State of Pennsylvania :
County of Dauphin : ss

On this, the ____ day of ____, ____, before me a notary public, the undersigned officer, personally appeared **Stephen M. Kozlosky**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2017 RESOLUTION NO. -2017

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

Rebecca K Kunkel
Assistant City Solicitor

11-9-17
Date

Requested by Department/Bureau: Budget and Finance

Department/Bureau Contact Person: Bruce Weber

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by: [Signature]

Date: 11-9-17