

RESOLUTION 23-35 - PURCHASE AND SALE AGREEMENT BETWEEN THE DELAWARE RIVER AND BAY AUTHORITY, NEW CASTLE COUNTY AND THE OFFICE OF MANAGEMENT AND BUDGET ON BEHALF OF THE DELAWARE ARMY GUARD FOR PROPERTY LOCATED AT THE WILMINGTON AIRPORT

WHEREAS, the Delaware River and Bay Authority (the “Authority”), is the operator of the Wilmington Airport (the “Airport”); and

WHEREAS, New Castle County is the owner of the Airport; and

WHEREAS, the Delaware Army National Guard (the “Guard”) currently leases approximately 24 +/- acres of land at the Airport; and

WHEREAS, the Guard has a need to expand their facilities to add a Rediness Center for the 126th Army Aviation Company (UH-60) Air Ambulance) and to have space for staging in relation to pandemic responses; and

WHEREAS, the Authority controls a facility adjacent to the Guard leasehold, commonly referred to as 12 Penns Way (the “Premises”) that is currently available for sale; and

WHEREAS, the Premises sits on 2.94 +/- acres and contains an office building totaling approximately 27,000 sq.ft.; and

WHEREAS, the Guard desires to purchase the Premises and has received CARES funding for the purchase; and

WHEREAS, the Authority agrees that it will execute an amendment to the Ground Lease with the County removing the Premises from its leasehold interest, and it will agree to sell the Premises to the Guard if the following conditions are met:

- (i) Obtains the County’s agreement to release the Premises from the Ground Lease upon terms reasonably satisfactory to the Authority;
- (ii) Obtains the County’s agreement to sell the Premises to the Guard at no less than Two Million One Hundred Thousand 00/100 Dollars (\$2,100,000.00) as determined by appraisals pursuant to fair market value policies issued by the Federal Aviation Administration (the “FAA”);
- (iii) Obtains the County’s agreement that the purchase price for the Premises shall be paid to the Authority for its airport fund, which is administered by the Authority as the sponsor of the Airport for (a) eligible items of airport development set forth in the Airport’s grant program and reflected in the Airport’s capital improvement program (CIP); (b) any aeronautical items of airport development not eligible under the grant program; (c) retirement of airport bonds that are secured by pledges of Airport revenue, including repayment of loans from other federal agencies; and/or (d) development of

common use facilities, utilities and other improvements on dedicated revenue production property that clearly enhances the revenue production capabilities of the property. If the Authority shall use the Purchase Price for any capital improvement project at the Airport, the undepreciated amount of such capital project (the extent such capital project is funded by the Purchase Price) shall be excluded from the calculation of the “Unamortized Costs” of the capital improvements referenced in Section 3 of the Original Ground Lease;

- (iv) The Guard agrees to purchase the Premises in its “AS-IS” condition pursuant to a special warranty deed, with no representations or warranties given by the Authority or the County other than those customary representations or warranties given by a “grantor” with respect to title to the Premises;
- (v) Obtains a deed of release in recordable form from the FAA releasing the Premises, or any portion thereof that is subject to FAA regulation, from FAA regulation and the conditions, reservations, exceptions and restrictions imposed pursuant to that certain Instrument of Transfer dated April 28, 1949 and effective as of October 27, 1947, as the same is of record in the Office of the Recorder of Deeds in and for New Castle County, Delaware at Deed Record C, Volume 49, page 75;
- (vi) Executes a restrictive covenant, in form and substance satisfactory to the Authority and the County, in their sole discretion, prohibiting any activity on the Premises that would be incompatible with airport operations or would create a hazard or interference to the operation of aircraft and/or communication facilities;
- (vii) Grants to the Authority and the County an easement in form and substance satisfactory to the Authority and the County, in their sole discretion, that would (a) establish the maximum height for structures and objects of natural growth, (b) provide a right of flight for the passage of aircraft in the space above the Premises, and (c) provide the Authority, the County and airport tenants and users the right to create or generate such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of flight using said airspace;
- (viii) Agrees to execute such additional instruments, certificates, documents or agreements that may be reasonably requested to complete the sale of the Premises;

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to finalize the terms and conditions of the purchase and sale agreement with the State of Delaware on behalf of the Delaware Army Guard and with the advice and consent of counsel, to have such Agreement executed by the Chairperson, Vice Chairperson, and the Executive Director.

NOW, THEREFORE, BE IT RESOLVED, that Resolution 23-17 is hereby rescinded.

Resolution 23- 35 - Executive Summary

Resolution: Authorizing a Purchase and Sale Agreement between the Delaware River and Bay Authority, New Castle County, and the state of Delaware on behalf of the Delaware Army Guard for property located at the Wilmington Airport.

Committee: Economic Development

Committee Date: June 21, 2023

Board Date: June 21, 2023

Purpose of Resolution: To permit the Executive Director, Chairperson and Vice Chairperson to execute and deliver a purchase and sale agreement for property at the Wilmington Airport.

Background of Resolution:

The Delaware River and Bay Authority operates the Wilmington Airport. The airport is owned by New Castle County. The Delaware Army Guard, through the State of Delaware would like to purchase a facility located at 12 Penns Way. The State received CARES funds and a portion of those funds were approved and granted to the Army Guard to acquire the property in support of future pandemic or medical support activities. The property is designated as part of the airport and is restricted by the FAA for any use other than airport. A review process is being done by the FAA to release this parcel from those restrictions. Part of that review requires that 2 appraisals and a review appraisal be completed in order to determine the FMV for the property. Through that process \$2,100,000 was determined to be the value.