

AN ORDINANCE AUTHORIZING THE EXECUTION OF A REAL PROPERTY PURCHASE AND SALES AGREEMENT BY AND BETWEEN GARDEN STATE HIGHWAY PRODUCTS, INC., MILLVILLE, NEW JERSEY AND THE CITY OF VINELAND FOR THE ACQUISITION OF BLOCK 1909, LOT 56.

WHEREAS, THE Vineland Municipal Electric Utility (VMEU) is in the process of demolishing old dilapidated buildings and replacing them with newer modern buildings to better meet the needs of the Vineland ratepayers; and

WHEREAS, the Director of the VMEU has recommended the City consider the acquisition of an existing commercial building that has and meets the needs of the VMEU rather than constructing a new facility which would cost the City a substantial amount more than acquiring an existing building; and

WHEREAS, the owner of certain vacant land and improvements located at 1740 East Oak Road, Block 1909 Lot 56 on the tax map of the City of Vineland (Property) has offered the Property for sale to the City for \$830,000.00 and, upon inspection, the Director has found the Property to meet the present and future needs of the VMEU; and

WHEREAS, acquisition of the Property will save time and money for the ratepayers and taxpayers by occupying an existing vacant building ready for use rather than demolishing an old building and constructing a new facility with all of the amenities of the Property at a substantially higher cost; and

WHEREAS, the CFO has certified the availability of funds for acquisition.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that the Mayor and Clerk are authorized to execute a Property Purchase Agreement with Garden State Highway Products, Inc, Millville, New Jersey and all other documents necessary to consummate said sale of 1740 East Oak Road, Vineland, New Jersey in the form substantially similar to the form attached hereto, subject to non-material changes as approved by the City Solicitor for the price of Eight Hundred Thirty Thousand (\$830,000.00) Dollars.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this "Agreement") is made on November _____, 2020, between Garden State Highway Products, Inc., with its principal office located at 301 Riverside Drive, Millville, New Jersey, ("Seller"), and the City of Vineland a Municipal Corporation organized under the laws of State of New Jersey, having its principal office located at 640 East Wood Street, Vineland, New Jersey ("Purchaser").

RECITALS

A. Seller is the owner of fee title to real property known as and located at 1740 East Oak Road, Vineland, New Jersey, Block 1909, Lot 56, on the Tax Map of the City of Vineland ("Land").

B. The Land is improved by a building (the "Building") and other improvements (collectively, with the Building, the "Improvements or Property") including but not limited to all mechanical, plumbing, heating, ventilating, air-conditioning, electrical fixtures, equipment, and systems located in or on the Improvements.

C. With respect to the Land and the Improvements, Seller may also own the service and maintenance contracts, equipment service contracts (collectively, the "Contracts").

D. Purchaser wishes to purchase the Property from Seller, and Seller is willing to sell the Property to Purchaser, subject to certain terms and conditions.

E. Seller and Purchaser wish to set forth in writing the terms of their agreement relating to the foregoing.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

SECTION ONE. RECITALS INCORPORATED

The recitals stated above are incorporated into and made a part of this Agreement.

SECTION TWO. SALE AND PURCHASE

Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey the Property to Purchaser, and Purchaser agrees to purchase and accept the Property from Seller.

SECTION THREE. PURCHASE PRICE

The purchase price for the Property ("Purchase Price"), shall be \$830,000.00 payable by check or wire transfer of collected funds on the Closing Date.

**SECTION FOUR.
TITLE TO BE DELIVERED**

Promptly after the parties have executed and delivered this Agreement, Purchaser shall order, from a title insurance company or agency licensed to write title insurance in State of New Jersey (“Title Insurance Company”), a commitment for an ALTA owner’s title insurance policy (the “Commitment”), in which Title Insurance Company agrees to issue to Purchaser upon the recording of the conveyance document(s), an ALTA owner’s title insurance policy in the full amount of the Purchase Price, and legible copies of all documents referred to in the Commitment as affecting title to the Land (the “Title Documents”). Purchaser also may order, not later than 30 days after its receipt of the Commitment and the Title Documents, from a registered land surveyor, a survey of the Land (the “Survey”), containing a certification addressed to Seller, Purchaser, Title Insurance Company and Purchaser’s lender (if any), in form acceptable to Purchaser and Purchaser’s lender, if any, and locating all of the items shown on the Commitment as affecting title to the Land. (The Commitment, the Title Documents and any Survey timely ordered by Purchaser, are collectively called the “Title Evidence.”)

Purchaser shall have 10 days after its receipt of the Title report to render objections to title in writing to Seller. Any matters not timely objected to by Purchaser shall be Permitted Exceptions. Seller shall have 10 days after the date of timely notice of such objections to cause the same to be removed or satisfied. Seller agrees to use reasonable efforts promptly to satisfy any such objections. Seller shall satisfy on or before the Closing Date any exception which may be satisfied solely by the payment of money. If Seller shall fail to cause such objections to be removed or satisfied within that time, Purchaser may, at its sole discretion, either (a) terminate this Agreement by notice to Seller, in which event Seller and Purchaser shall execute a written termination of this Agreement and upon such termination neither party shall have any further rights or obligations under this Agreement except for obligations which expressly are provided in this Agreement to survive a termination of this Agreement (the “Surviving Obligations”); or (b) accept title subject to such objections, in which event such objections shall be Permitted Exceptions.

**SECTION FIVE.
RIGHTS OF INSPECTION, TESTING, AND REVIEW**

A. Seller shall make available to Purchaser, within 5 days after the mutual execution of this Agreement, complete and accurate copies of any and all notices, consents, approvals, plans, specifications, surveys, engineering studies, analyses, reports and analyses of soil borings, environmental studies (collectively, the “Seller’s Environmental Reports”), leases and other documentation pertaining to the Property (whether prepared by Seller, Seller’s agents or independent contractors, any federal, state, regional or local governmental authority or agency, or any other party), to the extent that Seller has the same in its possession or control, all of which shall remain the property of Seller unless and until the Closing occurs, and all of which shall be returned to Seller promptly upon any termination of this Agreement. Purchaser’s obligation to return such items to Seller upon termination of this Agreement shall be a Surviving Obligation. Such documentation shall include but not be limited to the Contracts, Warranties, and Records. If Purchaser does not wish Seller to assign any of the Contracts at Closing, Purchaser shall give Seller notice of such wish within 10 days after its receipt of such Contract(s), in which case Seller shall terminate such Contract(s) included in Purchaser’s notice at or prior to Closing.

B. Purchaser, its counsel, accountants, agents, contractors and other representatives shall have full and continuing access to the Property and Seller’s records relating to the Property for 60 days from of the execution of this Agreement (the “Contingency Date”), upon reasonable notice to Seller and any tenant or subtenant in possession of any part of the Property. Purchaser and its counsel, accountants, agents, contractors and other representatives also shall have the right to enter upon the Land at any time after the execution and delivery of this Agreement for inspecting, surveying, engineering, soil borings, performance of environmental tests and such other work as Purchaser shall consider appropriate; provided, however, that such work shall not include demolition or removal of the Improvements or any part of the Improvements. Purchaser shall hold Seller harmless from and fully indemnify Seller against any damage, claim, liability, or cause of action arising from or caused by the actions of Purchaser, its agents or representatives, upon the Land from the date of this Agreement through the Closing Date; provided, however, that Purchaser shall not be liable or be required to indemnify Seller against claims,

liabilities, or causes of action arising from Purchaser's mere discovery of hazardous materials or a violation of environmental laws. The obligations in the preceding sentence shall be Surviving Obligations. Purchaser further shall have the right to make such inquiries of governmental agencies and utility companies, etc., and to make such feasibility studies and analyses as it considers appropriate (the review of the documents under paragraph A of this SECTION FIVE, together with the review of the Property under this paragraph B, are referred to as the "Inspections"). Purchaser may elect, by notice to Seller on or before the Contingency Date, to terminate this Agreement as of a date not later than the Contingency Date if Purchaser is not satisfied with the results of the Inspections, in which event: this Agreement shall terminate; Seller and Purchaser shall execute a written termination of this Agreement; and upon such termination neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

**SECTION SIX.
CONTROL OF PROPERTY**

Until the Closing Date and subject to Purchaser's indemnification obligations under SECTION FIVE, paragraph B, Seller shall have full responsibility and liability for any and all damages or injury of any kind whatsoever to the Property, to any person in, on, or about the Property, and to all personal property located on, removed from or related to the Property. If, prior to the Closing Date, the Property is materially damaged or becomes the subject of an action or threat of an action in condemnation or eminent domain, whether temporary or permanent, Seller promptly shall notify Purchaser of such damage, action or threat of action, and Purchaser, in its sole discretion, shall have the right to terminate this Agreement by notice to Seller within 10 days after such notice by Seller to Purchaser, in which event Seller and Purchaser shall execute and deliver a written termination of this Agreement, and upon such termination neither party shall have any further rights or obligations under this Agreement, except for the Surviving Obligations. If Purchaser does not timely exercise its right of termination, any and all proceeds arising out of such damage or destruction, if the same be insured, or such eminent domain or taking, shall be assigned and paid to Purchaser on the Closing Date. From the date of this Agreement until the Closing Date, Seller shall keep the Property insured and maintained to an extent and in a manner not less than exists on the date of this Agreement, and shall not grant any easement, right-of-way, license, leasehold or other interest in or relating to the Property without Purchaser's prior written consent, which Purchaser may withhold in Purchaser's sole and absolute discretion.

**SECTION SEVEN.
REPRESENTATIONS OF SELLER**

To induce Purchaser to enter into this Agreement and purchase the Property, Seller represents and warrants to Purchaser that:

- A. Seller is the owner of fee title to the Property.
- B. Seller has all requisite power and authority to enter into and perform the obligations of Seller under this Agreement.
- C. This Agreement has been executed and delivered on behalf of Seller.
- D. To the best of Seller's knowledge, there is no individual sewage treatment system on or serving the Property.
- E. To the best of Seller's knowledge, the Land does not now contain any underground or above-ground storage tanks and, if any above-ground or underground tanks previously were located on the Land, Seller has provided to Purchaser any and all information available to Seller in connection with the installation, operation, and removal of such tanks.
- F. Seller knows of no wells on the Land.
- G. Seller has made available to Purchaser, or will make available to Purchaser as and when required by this Agreement, a correct and complete copy of each Contract and its amendments which will survive the Closing.
- H. Seller has delivered to Purchaser, or will deliver to Purchaser as and when required by this Agreement, copies of all environmental reports and studies relating to the Property which are in Seller's possession or control.

I. No person is entitled to be in possession of all or any part of the Property pursuant to any lease or other agreement.

J. Seller has not entered into any other contract for the sale of the Property which is still in effect, and has not granted any right of first refusal or option to purchase the Property that is still in effect and could prevent the consummation of the transaction contemplated by this Agreement.

K. Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate," as those terms are defined in 26 U.S.C.A. § 1445.

L. To the best of Seller's knowledge there is no action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against or related to any portion of the Property.

M. To Seller's knowledge, except as set forth in Seller's Environmental Reports or any environmental reports that Purchaser has provided to Seller: (i) no toxic or hazardous substances or wastes, pollutants, or contaminants including but not limited to asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in any Environmental Law (collectively, "Hazardous Substances") have been generated, treated, stored, transferred from, released or disposed of, or otherwise placed, deposited in or located on the Property in violation of any Environmental Law, nor has any activity been undertaken on the Property that would cause or contribute to the Property becoming a treatment, storage or disposal facility within the meaning of any Environmental Law; (ii) there has been no discharge, release or threatened release of Hazardous Substances from the Property; (iii) there are no Hazardous Substances or conditions in or on the Property that may support a claim or cause of action under any Environmental Law; (iv) the Property is not now, and to the best of Seller's knowledge never has been, used as landfill, dump or disposal site for Hazardous Substances; and (v) Seller has maintained all records required to be kept concerning the presence, location and quantity of asbestos containing materials, and presumed asbestos containing materials, in the Property and will deliver the same to Purchaser on or before closing. The term "Environmental Law" shall mean any and all federal, state and local laws, statutes, codes, ordinances, regulations, rules, policies, consent decrees, judicial orders, administrative orders or other requirements relating to the environment or to human health or safety associated with the environment, all as amended or modified from time to time.

N. The Land is not affected by airport zoning regulations.

SECTION EIGHT. PURCHASER'S CONDITIONS TO CLOSING

All the obligations of Purchaser under this Agreement are subject to fulfillment, or waiver in writing by Purchaser, on or before the Closing Date, of each of the following conditions:

A. Seller's representations and warranties in SECTION SEVEN above shall be correct as of the Closing Date, and Seller shall have performed all of Seller's obligations under this Agreement which are to be performed on or before the Closing Date.

B. Title to the Property shall be subject only to the Permitted Exceptions.

C. Purchaser has not terminated this Agreement, on or before the Contingency Date pursuant to SECTION FIVE, paragraph

SECTION NINE. CONDITIONS TO SELLER'S OBLIGATIONS

Seller's obligations under this Agreement to close the transaction contemplated by this Agreement are contingent upon Purchaser's performance of all of Purchaser's obligations under this Agreement which are to be performed on or before the Closing Date, and the closing of the transaction contemplated by the Stock-Purchase Agreement. If the conditions to Seller's obligations set forth in this SECTION NINE have not been satisfied, or waived by Seller, on or before 60, Seller shall have

the right, by notice to Purchaser given not later than 60 of the execution of this Agreement, to elect to terminate this Agreement, in which event Seller and Purchaser shall execute a written termination of this Agreement, and upon such termination neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

SECTION TEN. CLOSING

Subject to the fulfillment or waiver of the conditions of this Agreement, the Closing shall occur on a date (the "Closing Date") that is 20 days from the expiration of the contingency date, or such earlier date as shall be agreed upon by Seller and Purchaser. The Closing shall be held at the offices of Purchaser's Title Company, or such other place as Seller and Purchaser may mutually agree. However, Seller or Purchaser may close via an escrow arrangement with Title Insurance Company and same may be virtual. Seller shall deliver possession of the Property to Purchaser, subject to the Permitted Exceptions, on the Closing Date.

SECTION ELEVEN. SELLER'S OBLIGATIONS AT CLOSING

On the Closing Date, Seller shall:

- A. Execute and deliver to Purchaser Seller's Bargain and Sale Deed with Covenant as to Grantor's Act (the "Deed").
- B. Execute and deliver to Purchaser an Affidavit Regarding Seller, certifying to Seller and Title Insurance Company as to the absence of any matters which may have an adverse effect on Purchaser's title to the Land.
- C. Cause Title Insurance Company to agree, subject to payment of the premium for the same, to issue to Purchaser an ALTA Owner's Title Insurance Policy, or a suitably marked up copy of the Commitment, in the form and substance required under this Agreement, insurable at regular rates.
- D. Execute and deliver to Purchaser an Assignment of Contracts, Warranties, and Records conveying Seller's interest in the same to Purchaser.
- E. Execute and deliver a Designation Agreement providing IRS reporting information, including but not limited to the Federal Taxpayer Identification Number of Seller.
- F. Deliver to Purchaser an affidavit confirming that Seller is not a "foreign person," "foreign corporation," "foreign partnership," "foreign trust," or "foreign estate," as those terms are used in 26 U.S.C.A. § 1445, as amended, and the regulations under that section.
- G. Execute and deliver any well disclosure certificate(s) required by law.
- H. Deliver to Purchaser such other documents (including but not limited to original copies of the documents described in SECTION FIVE, paragraph A, to the extent that such original copies are in the possession or control of Seller) as may be required by this Agreement, all in form satisfactory to Purchaser in its reasonable discretion.

SECTION TWELVE. PURCHASER'S OBLIGATIONS AT CLOSING

At Closing, and subject to the terms, conditions and provisions of this Agreement and the performance by Seller of its obligations as set forth in this Agreement, Purchaser shall deliver the Purchase Price to Seller pursuant to SECTION THREE

of this Agreement; and Purchaser shall execute and deliver such other documents as may be required by this Agreement, all in form satisfactory to Seller in its reasonable discretion.

**SECTION THIRTEEN.
CLOSING COSTS**

Costs and expenses shall be paid as follows in connection with the sale and purchase of the Property.

A. Seller shall pay:

1. The state deed tax and any conservation fee imposed on the Deed.
2. A pro rata portion of all real-estate taxes and installments of special assessments as provided in SECTION FOURTEEN below.
3. Any and all deferred real-estate taxes such as “green acres” taxes as of the Closing Date.
4. Seller’s attorneys’ fees.
5. The cost of recording any document necessary to make title marketable.
6. The cost of filing any well certificate(s).

B. Purchaser shall pay:

1. The premium and other charges for issuance of the Title Policy, to the extent not payable by Seller as provided above.
2. The recording fee for the Deed.
3. One-half of any closing fee, and all of any escrow or other fee charged by Title Insurance Company.
4. Purchaser’s attorneys’ fees.

**SECTION FOURTEEN.
REAL-ESTATE TAXES AND SPECIAL ASSESSMENTS**

Real-estate taxes and installments of special assessments due and payable in year 2020 shall be prorated between Seller and Purchaser to the Date of Closing. Seller shall pay all real-estate taxes and installments of special assessments due and payable in prior years (including but not limited to any “green acres” or other deferred taxes or assessments).

**SECTION FIFTEEN.
BROKERAGE**

Seller and Purchaser each represents and warrants to the other that it has not engaged the services of any broker in connection with the sale and purchase contemplated by this Agreement. Seller and Purchaser each agrees to indemnify and hold the other harmless from any claim (including reasonable expenses incurred in defending such claim) made by a broker, sales agent or similar party in connection with this transaction and arising from the contract or contact of the indemnifying party. The obligations in this SECTION FIFTEEN shall be Surviving Obligations.

**SECTION SIXTEEN.
REMEDIES**

If Seller defaults in the performance of this Agreement and such default continues for 10 days after notice from Purchaser to Seller specifying such default, Purchaser may cancel this Agreement by notice to Seller within 3 days after expiration of the 10-day period. If Seller defaults in the performance of this Agreement and Purchaser does not cancel this Agreement, Seller acknowledges that the Property is unique, that Purchaser has expended substantial sums for planning, evaluation, testing and other activities in anticipation of Purchaser's intended use of the Property, and that money damages to Purchaser in the event of default by Seller are inadequate. Accordingly, Purchaser shall have the right, in addition to any other remedy available, to apply for and to receive from a court of competent jurisdiction equitable relief by way of restraining order, injunction or otherwise, prohibitory or mandatory, to prevent a breach of the terms of this Agreement, or by way of specific performance to enforce performance of the terms of this Agreement, or rescission. This right to equitable relief shall not be construed to be in lieu of or to preclude the right to seek a remedy at law. Purchaser must commence any action seeking such equitable relief within 30 days following such breach. If Purchaser defaults in the performance of this Agreement, Seller may cancel this Agreement, or Seller may sue Purchaser for specific performance of this Agreement or for damages for breach of this Agreement, provided any such action is commenced within 3 months following Purchaser's default.

**SECTION SEVENTEEN.
NEW JERSEY BULK SALES**

Within ten (10) days following written request by Purchaser the Seller shall provide Purchaser with all information and documentation necessary for the Purchaser to complete the New Jersey Division of Tax Form C-9600, Notification of Sale, Transfer or Assignment in Bulk or any other documents that are required by the State of New Jersey related thereto. Thereafter, the Purchaser will promptly file the C-9600. Issuance by the State of New Jersey of a letter setting or waiving the escrow requirements shall be a condition to Purchaser's obligation to close on the Property located in the State of New Jersey. Should the State of New Jersey require an escrow, the Seller agrees to fund an escrow in the amount required for the Proceeds of Sale, said escrow to be held by the Title Company pursuant to an Escrow Agreement in the form reasonably acceptable to the Parties. The Seller agrees to indemnify and hold Purchaser harmless from any of the Seller's tax liability which obligations shall survive closing.

**SECTION EIGHTEEN.
MISCELLANEOUS**

The following general provisions govern this Agreement.

A. No Waiver.

The waiver by either party of any condition or the breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or of any other term, covenant or condition contained in this Agreement. Either party may waive any right conferred upon such party by this Agreement only by giving the other party notice specifically describing the right waived.

B. Time of Essence.

Time is of the essence of this Agreement.

C. Governing Law.

This Agreement is made and executed under and in all respects shall be governed and construed by the laws of State of New Jersey, Cumberland County.

D. Notices.

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given on the earliest to occur of: when deposited with the United States Postal Service, postage prepaid, certified or registered mail, return receipt requested, addressed as set forth below; when personally delivered to the addressee; or when deposited cost-paid with a nationally recognized overnight courier service (e.g., Federal Express). Either party may designate a different or additional address to which notice to such party subsequently shall be sent, by giving at least *[number of days]* days' notice to the other party. The addresses are as follows:

1. If to Seller:

Robert Green

301 Riverside Drive, Millville, New Jersey
Email: bob@gshpinc.com

2. If to Purchaser:

City of Vineland

640 East Wood Street, Vineland, New Jersey
Attn: Richard P. Tonetta, Esq

Email: Rtonetta@vinelandcity.org

Any written notice given in a manner other than as provided in this paragraph D shall be deemed to have been given only upon actual receipt by the addressee.

E. Assignment.

Except as to an entity controlling, controlled by, or under common control with Purchaser or its shareholders, neither this Agreement nor any of Purchaser's rights in and to the Property may be assigned by Purchaser without the prior written consent of Seller, which Seller may withhold in its sole and absolute discretion. An assignment to an entity controlling, controlled by, or under common control with Purchaser or its shareholders shall be permitted upon written notice to Seller, accompanied by a copy of the document(s) effecting such transfer and evidencing that the assignee is controlling, controlled by, or under common control with Purchaser and/or its shareholders. No such assignment shall release Purchaser from any liability under this Agreement. Seller may assign this Agreement as contemplated in SECTION SEVENTEEN above or to any entity wholly owned by Seller and/or its members, upon written notice to Purchaser, accompanied by a copy of the document(s) effecting such transfer and evidencing that the assignee is wholly owned by Seller and/or its members or that such assignment is in connection with a tax-deferred exchange. No such assignment shall release Seller from any liability under this Agreement. Any other assignment of this Agreement by Seller shall require the prior written consent of Purchaser, which Purchaser may withhold in its sole and absolute discretion.

F. Severability.

If for any reason any term or provision of this Agreement shall be declared void or unenforceable by any court of law or equity, it shall affect such particular term or provision of this Agreement only, and the balance of this Agreement shall remain in full force and effect.

G. Costs of Enforcement.

If any action or proceeding is brought by Seller or Purchaser to interpret the provisions of this Agreement or to enforce such party's rights or remedies under this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party in such action or proceeding, in addition to all other remedies, all costs incurred by the prevailing party in such action or proceeding, including reasonable attorneys' fees.

H. Entire Agreement.

All understandings and agreements previously made between the parties, including but not limited to the letter of intent among Seller, and Purchaser, are merged into this Agreement, which alone fully and completely expresses their agreement. This Agreement may be amended only in writing.

I. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which together shall constitute a single agreement.

The parties have executed this Agreement as of the day and year first set forth above.

By:

Garden State Highway Products, Inc.
Robert Green
Vice President, Authorized Signor

By:

City of Vineland
Anthony R. Fanucci
Mayor