To the Honorable Council  
City of Norfolk, Virginia  

From: Christine Morris, Chief Resilience Officer  
Office of Resilience  

Subject: Purchase of 731 Sedgwick Street as part of the Ohio Creek Watershed Improvement Project  

Ward/Superward: 4/7  

Reviewed: Wynter C. Benda, Chief Deputy City Manager  

Approved: Douglas L. Smith, City Manager  

Item Number: R-05  

October 23, 2018  

I. Recommendation: Adopt Ordinance  

II. Applicant: City of Norfolk  

III. Description:  
This agenda item is an ordinance to authorize the purchase of 731 Sedgwick Street for use in the construction of the coastal protection in the Ohio Creek Watershed Improvement Project. This purchase will be contingent upon the certification of the Environmental Impact Statement and the release of National Disaster Resilience Competition ("NDRC") construction funds.  

IV. Analysis  
Under a grant award from the U.S Department of Housing and Urban Development ("HUD") through the NDRC, the City of Norfolk (the "City") is undertaking a comprehensive flood risk management project in the Ohio Watershed including neighborhoods of the Chesterfield Heights and Grandy Village on the eastern branch of the Elizabeth River. Improving the coastal protections requires the installation of an earthen berm along the coastline of the Chesterfield Heights neighborhood. The property is being acquired by the City to be used in the installation of that berm.  

V. Financial Impact  

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Price</td>
<td>$175,000</td>
</tr>
<tr>
<td>Typical Costs of Closing</td>
<td>$10,000</td>
</tr>
<tr>
<td>Appraised Value</td>
<td>$175,000</td>
</tr>
</tbody>
</table>
VI. **Environmental**
An environmental impact statement for the project is under development. It is anticipated that the project will have a net benefit environmental impact on the neighborhood.

VII. **Community Outreach/Notification**
The Project has had an extensive outreach component including over 25 community meetings in the neighborhoods. Public notification for this agenda item was conducted through the City’s agenda notification process.

VIII. **Board/Commission Action**
N/A

IX. **Coordination/Outreach**
This letter and ordinance have been coordinated with the City Attorney’s office and the Office of Resilience.

**Supporting Material from the Office of Resilience:**
- Ordinance
- Purchase and Sales Agreement
AN ORDINANCE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT IN SUBSTANTIAL CONFORMITY WITH THE TERMS AND CONDITIONS OF THE ATTACHED PURCHASE AND SALE AGREEMENT, FOR THE PURPOSE OF PURCHASING CERTAIN PROPERTY KNOWN AS 731 SEDGEWICK STREET, IN THE CITY OF NORFOLK, FOR THE OHIO CREEK WATERSHED IMPROVEMENT PROJECT, AUTHORIZING THE PURCHASE OF SAID PROPERTY, AND AUTHORIZING THE EXPENDITURE OF A SUM OF UP TO $185,000 FOR SUCH PURPOSE FROM FUNDS HERETOFORE APPROPRIATED.

WHEREAS, Section 2 of the Charter of the City of Norfolk authorizes the purchase of real property by the City for its purposes; and

WHEREAS, by ordinance No. 46,717, the City Council accepted, appropriated and authorized the expenditure of Community Development Block Grant Funds for the Ohio Creek Watershed Improvement Project; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the purchase of that certain real property located in the City of Norfolk, at 731 Sedgewick Street, is hereby authorized and approved.
Section 2:- That the City Manager is hereby authorized to negotiate an agreement for the purchase of the aforesaid property in substantial conformity with the terms and conditions of the Purchase and Sale Agreement, a copy of which is attached hereto and made a part of this ordinance as Exhibit A.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Purchase and Sale Agreement as he may deem advisable and in a manner satisfactory to the City Attorney and consistent with this ordinance to carry out the intentions of the Council.

Section 4:- That the City Manager is authorized to accept a Deed, in form satisfactory to the City Attorney, conveying the aforementioned real property to the City of Norfolk, to expend up to $185,000 to pay the purchase price of $175,000 and the closing costs, and to do all other things necessary and proper to effect the conveyance of the real property to the City.

Section 5:- That this ordinance shall be in effect from and after its adoption.
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is dated as of the 31\textsuperscript{st} day of July, 2018, by and between Sylvia F. Randolph as trustee, ("Seller" or "Owner"), and the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia, ("Purchaser" or "City").

WITNESSETH:

WHEREAS, Seller is the trustee of certain revocable trust for the real property located at 731 Sedgewick Street in the City of Norfolk, described in Exhibit A attached to and made a part of this Agreement (Property); and 

WHEREAS, City wishes to acquire the Property for the Ohio Creek Project under the National Disaster Resilience Competition program of the Community Development Block Grant of the U.S. Housing and Urban Development Administration ("CDBG-NDRC"); and

WHEREAS, Owner desires to sell and City desires to purchase the Property upon the terms and conditions set forth in this Agreement; and

WHEREAS, certain conditions are necessitated by the regulatory requirements of the CDBG-NDRC; and

WHEREAS, the parties intend that these recitals be incorporated by reference into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Agreement, Owner agrees to sell and City agrees to purchase, upon and subject to the terms and conditions contained herein, the Property, with all improvements thereon and easements and appurtenances thereunto belonging, and all of Owner's right, title and interest in all public ways adjoining same.

ARTICLE I

PURCHASE PRICE

1.1. Purchase Price. The purchase price for the Property shall be the sum of One Hundred Seventy-Five Thousand Dollars ($175,000.00).

1.2. Manner of Payment. Payment shall be delivered in the form of a City check, or by wire transfer of funds.
ARTICLE II

CONVEYANCE

2.1. General Warranty Deed. The Property, and any improvements thereon, shall be conveyed by General Warranty Deed, free and clear of all liens, but subject to all encumbrances, easements, matters of survey and restrictions of record. Title to the Property shall be insurable in form satisfactory to City by a nationally recognized title insurance company selected by City (with no exception for unfiled mechanics' and materialmen's liens) at its standard premium rates.

ARTICLE III

CLOSING

3.1. Time and Place. The Closing ("Closing") shall be held at the offices of the Norfolk City Attorney after all the conditions and obligations of the parties of this Agreement are met. The satisfaction of all conditions specified below may result in a one-year lapse between the date of this Agreement and the date of the Closing.

3.2. Conditions to Closing. City's obligations under this Agreement are subject to the satisfaction of the following conditions as of the date of Closing (or as of such earlier date specified):

(a) Title Matters. City shall have obtained a commitment (the "Title Commitment") for issuance of an ALTA Owner's Policy of Title Insurance (the "Title Policy"). In the event that the Title Commitment and/or any other physical survey obtained by City discloses defects of title or other matters unsatisfactory to City, City shall notify Owner in writing (an "Objection Notice") on or before the sixtieth (60th) day after the date of complete execution of this agreement, of such title defects or other matters to which City objects. Owner covenants that it shall cure all title objections which may be cured by execution of a document requiring the signature of no party other than Owner (including any affidavits which may reasonably be required by the title insurer).

(b) Representations and Warranties. Owner's representations and warranties, as set forth in Article IV shall be true and correct (with respect to representations) and unbreached (with respect to warranties) in all material respects as of the date of Closing.

(c) Environmental Report. City shall have received a satisfactory Phase I environmental report on the Property. Such Phase I study shall be performed within the sixty-day period following complete execution of this agreement. If such report is unsatisfactory, as determined by City in its sole discretion, City shall order a Phase II study and do all things necessary to complete the Environmental Review Record required by the CDBG-NDRC process.
City shall notify Owner in writing about the Phase II study prior to the end of such sixty-day period.

(d) **CDBG-NDRC Requirements.** City shall have received approval of the Environmental Review Record (environmental certification) for the Property, approval of the Environmental Impact Statement for the Ohio Creek Project and shall have obtained approval of a Request for Release of Funds for the Property and Project construction funds from the United States Housing and Urban Development Administration.

(e) **Ohio Creek Project Design.** The Property is included as part of the Ohio Creek Project in the 100% complete schematic design documents.

In the event any of the above conditions are unsatisfied at the time for Closing, and are not waived in writing by City, proper notice having been given to Owner as specified herein, or if City decides prior to the end of the sixty-day period following complete execution of this agreement, in its sole discretion, that the property is not satisfactory for the City's purposes, City may, at its election, terminate its obligations under this Agreement, whereupon this Agreement shall become null and void, no party having any further right or obligation hereunder.

3.3. **Prorations; Closing Costs.** Owner shall pay all costs associated with any fees, taxes or assessments, delinquent or otherwise, to the extent attributable to a period prior to Closing. These provisions shall survive Closing. Owner shall pay any required Virginia Grantor's tax charged upon the recordation of the Deed, and City shall pay all other required recordation taxes and fees to record the Deed. City shall pay all costs of title insurance, survey, due diligence reports and similar inspections. Each party hereto shall pay its own attorney's fees. City shall be responsible for the payment (or waiver therefrom) of all real estate taxes and assessments attributable to the Property coming due subsequent to the date of Closing. City shall pay settlement costs.

3.4. **Items to be Delivered by Owner.** At Closing Owner shall assign and/or deliver to City:

(a) The deed provided for in Article II hereof;

(b) A non-foreign status affidavit and other usual and customary documents required of a seller of real estate;

(c) Form 1099S real estate reporting information;

(d) A customary owner's affidavit to the title insurance company to issue its policy free of exceptions for rights of parties in possession, and unfiled mechanics' and materialmen's liens;

(e) All assignable licenses, permits, approvals, certifications and authorizations relating to the ownership and operation of the Property; and
All other rights, easements and rights-of-way relating to the Property.

3.5 Right Of Entry. City and City's authorized representatives may at any reasonable time and after giving reasonable notice to Owner, enter upon the Property for the purpose of 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 locating existing rights of way, easements, and utilities. City will exercise this right of entry in such a way so as to not cause unreasonable damage to the Property. City agrees, to the extent permitted by law, to indemnify, defend, and save harmless the Owner from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by any action or omission of City or its agents before or after Closing. Owner agrees to indemnify and save harmless the City from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by action or omission of Owner or its agents before Closing.

ARTICLE IV

OWNER'S REPRESENTATIONS AND WARRANTIES

Owner hereby makes the following warranties, representations and covenants with respect to the Property:

4.1. Leases and other Agreements. At the time of closing, there shall be no written or unwritten agreements recorded or unrecorded, affecting or relating to the use of the Property. Tenants displaced as a result of the acquisition of the Property by the City will be entitled to relocation assistance as provided under the federal regulations for projects in which federal funds are used: Exhibit B, which is hereto incorporated by reference, summarizes the payments and assistance a tenant is entitled to under the Uniform Relocation Act (49 CFR Part 24).

4.2. Litigation. There is no claim, action, suit, investigation or proceeding, at law, in equity or otherwise, now pending or, to the best of Owner's knowledge, threatened against Owner, or with respect to the Property, to which City might become a party. Owner is not subject to the terms of any decree, judgment or other action of any court, administrative agency or arbitrator, which has or could result in a material adverse effect on the Property or the operation and leasing thereof or Owner's obligations hereunder.

4.3. Governmental Requirements. Owner has not received any notice of violation of any federal, state, city, or other governmental order or requirement issued by any governmental body or by any action in any court, against or affecting the Property that has not been fully complied with in all respects to the satisfaction of the governmental authority having jurisdiction.

4.4. Assessments. There are no unpaid special assessments which affect the Property.
4.5. **No Conflict.** Neither the execution nor the delivery of this Agreement or the documents contemplated hereby, nor the consummation of the conveyance of the Property to City, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Owner is bound.

4.6. **Owner’s Authority.** Owner has full power to enter into this Agreement and to perform its obligations hereunder.

4.7. **Contracts for Services, Management or Goods.** The Property is not and will not be subject to any contract for services, management or goods. There are no unwritten agreements for services, management or goods affecting the Property.

4.8. **Environmental Matters.** To the best of Owner’s knowledge, without any investigation, (i) there are no "hazardous substances" (as defined in Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq., as amended) at the Property; (ii) there has been no release or threat of release of any such hazardous substance; (iii) the Property is not subject to regulation by any governmental entity as a result of the presence of (A) stored, leaked or spilled petroleum products, (B) underground storage tanks, (C) an accumulation of rubbish, debris or other solid waste, or because of the presence, release, threat of release, discharge, storage, treatment, generation or disposal of any "hazardous waste" (as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq., as amended), or "toxic substance" (as defined in the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq., as amended), including without limitation asbestos and items or equipment containing polychlorinated biphenyls (PCBs) in excess of 50 parts per million; (iv) no environmental condition exists on the Property that either (A) requires the owner of the Property to report such condition to any authority or agency of the State of Virginia or (B) requires the owner of the Property to make a notation of such condition in any public records or conveyancing instrument upon the conveyance of the Property; and (v) Owner has not received any written notice that any condition exists on the Property that is characterized by any governmental authority as an actual or potential danger to the environment or public health.

**ARTICLE V**

**CITY’S WARRANTIES**

City hereby makes the following warranties and representations with respect to the purchase of the Property:

5.1. **No Conflict.** Neither the execution nor the delivery of this Agreement or the documents contemplated hereby, nor the consummation of the conveyance of the Property to City, will conflict with or cause a breach of any of the terms and conditions of, or constitute a
default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which City is bound.

5.2. City’s Authority. City has full power, authorization and approval to enter into this Agreement and to carry out its obligations hereunder.

ARTICLE VI
NOTICES

All notices called for hereunder shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested, if to

City: Christine Morris, Chief Resilience Officer
Office of Resilience
501 Boush Street
Norfolk, Virginia 23510

With copy to: Bernard A. Pishko, Esq.
City Attorney
908 City Hall Building
Norfolk, Virginia 23510

or if to Owner: Sylvia F. Randolph, Trustee
3912 Brentwood Crescent
Virginia Beach, VA 23452

or to such other address as the party to receive such notice may hereafter request by written notice to the other.

ARTICLE VII
MISCELLANEOUS

7.1. Risk of Loss; Taking. In the event of a fire or other casualty to the Property or any portion thereof, City shall not have the right to terminate this Agreement unless a casualty is of such a nature to make the Property no longer functional or usable to the City. Any such termination notice shall be given within ten (10) days after City receives written notice of the casualty. If City does not terminate this Agreement pursuant to the preceding sentence, the
parties shall proceed to Closing on all of the terms and conditions of this Agreement, with no change or reduction in the Purchase Price.

7.2. **Right to Assign.** City shall have the right to assign this Agreement to any person, firm, partnership or corporation it selects.

7.3. **Survival of Agreement.** The provisions contained in this Agreement, including Owner's obligations, warranties and representations included in Article IV, will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

7.4. **Entire Agreement.** This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties.

7.5. **Gender; Number.** All pronouns shall be construed to be of such gender and number as the context may require.

7.6. **Headings.** All headings are for convenience of reference only and do not constitute a part of this Agreement or affect its meaning.

7.7. **Governing Law.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

7.8. **Additional Documentation.** Each party shall, upon request from the other from time to time (before or after Closing), take such acts and provide such additional documentation as shall be reasonably requested and reasonably necessary or desirable in order to effect the provisions of this Agreement. This obligation shall survive Closing.

7.9. **Severability.** This Agreement will be construed in its entirety and will not be divisible, except that the invalidity or unenforceability of any provision hereof will in no way affect the validity or enforceability of any other provision.

7.10. **Choice of Venue.** The parties hereby consent to the venue of the courts of the City of Norfolk, Virginia in connection with any action, suit, or proceeding arising out of this Agreement.

7.11. **Successor.** This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns.
7.12. **Counterparts.** This Agreement may be executed in any number of counterparts, each will be considered an original, and together they will constitute one Agreement.

WITNESS the following duly authorized signatures:

**CITY OF NORFOLK**

Douglas L. Smith, City Manager

ATTEST:

City Clerk

Date

**OWNER/TRUSTEE**

Sylvia F. Randolph

APPROVED AS TO CONTENT:

For Chief Resilience Officer

APPROVED AS TO FORM AND CORRECTNESS:

Deputy City Attorney
CERTIFICATION

I hereby certify that the money for this Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

ACCOUNT: 2500.41, 9227, 5307
AMOUNT: $175,000.00
CONTRACT NO.: 2995
VENDOR CODE: PIONCE0200

__________________________  __________________________
Director of Finance          Date
EXHIBIT A

LEGAL DESCRIPTION OF 731 SEDGEWICK STREET, CITY OF NORFOLK, VIRGINIA

Lots 67 and 69, and part of Lot 71, "Plan of Riverside Land Co's", MB 2, P. 10-11,

The above-described parcel contains 0.230 acre of land, more or less.