

To the Honorable Council
City of Norfolk, Virginia

November 29, 2022

From: Susan Perry
Director, Housing and Community
Development

Subject: Conveyance of 2430 West Avenue

Reviewed:

Trista Pope, Deputy City Manager

Ward/Superward: 3/7

Approved:

Dr. Larry H. Filer II, City Manager

Item Number: PH-05

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance to authorize the Sale of City owned Real Property, located at **2430 West Avenue**, to **Marshall Builders USA LLC**, as the Successful High Bidder at the City's Online Real Estate Auction, and to authorize the City Manager to execute a Special Warranty Deed on behalf of the City to convey its interest in said real property.

IV. **Analysis:**

Auction Background Information

- The second City-Owned Vacant Online Auction was launched in Fall 2022.
- Designed for transparency, equity and efficiency, this new auction process aligns with City housing priorities and goals to transform underutilized properties, increase economic inclusion, encourage and support wealth-building through homeownership and strengthen neighborhoods and communities.
- The City-Owned Vacant properties were listed on GovDeals.com from September 9, 2022, to October 8, 2022. The auction was live and subject to active bidding from October 14, 2022 through October 20, 2022.

Property Information:

- Vacant City-owned property located at 2430 West Avenue in the City of Norfolk, Virginia.
- Approximately 2,533 sq. ft., residential parcel in the Lindenwood/Barraud Park/Cottage Heights neighborhood zoned as “Single-Family Traditional Neighborhood-Scale”.
- With the purchase of the real property, the Successful High Bidder is required to construct a new, single-family dwelling in accordance with certain Protective Restrictive Covenants.

Bidder Information:

- o Marshall Builders USA, LLC
 - § Address: P. O. Box 10613
 - § Virginia Beach, VA 2345
- o Current on all taxes and fees owed to the City
- o No outstanding code violations

V. Financial Impact:

- The City will receive proceeds from the property sale of \$16,500.00.
- With new private ownership, the City will receive real property taxes from the owner of the property.
- **This property is a GEM Lot.**
 - o All sales proceeds in excess of the costs and expenses incurred by the City to acquire the property will be submitted to the Norfolk Circuit Court for proper distribution. Any such funds submitted to the court that are not properly claimed after two years may be remitted to the City’s General Fund.

Cost for Conveyance	\$0 - No cost to City
Typical Costs of Closing	\$0 - No cost incurred by city at Closing. Recording Fees paid by Successful High Bidder
FY22 Assessed Value of Parcel	\$16,500.00
Annual Tax Revenue (unimproved)	\$206.25

VI. Environmental:

N/A

VII. Community Outreach/Notification:

- Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.
- Property is in Lindenwood/Barraud Park neighborhood
- A webpage was published on the City of Norfolk website specific to the Vacant Property Auction.
- Adjacent owners, known contractors, and other interested parties were contacted directly to announce the Auction.
- Marketing efforts including city social media, property signs, and GovDeals property promotional emails and posts.

VIII. Board/Commission Action:

N/A

IX. Coordination/Outreach:

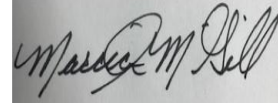
This letter and ordinance have been coordinated with the City Manager's Office, City Attorney's Office and the Department of Housing and Community Development.

Supporting Material:

- Exhibit A - Legal (PDF)
- Exhibit B to Ordinance (PDF)
- Exhibit C to Ordinance (PDF)

Form and Correctness Approved: *BAP*

Contents Approved:



By: _____
Office of the City Attorney

By: _____
DEPT. Department of Housing and
Community Development

NORFOLK, VIRGINIA

Ordinance No.

AN ORDINANCE AUTHORIZING THE SALE AND CONVEYANCE TO MARSHALL BUILDERS USA LLC OF THAT CERTAIN PARCEL OF PROPERTY LOCATED AT 2430 WEST AVENUE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE CITY'S ONLINE REAL ESTATE AUCTION AND AUTHORIZING THE MODIFICATION, REVISION OR RELEASE OF CERTAIN PROTECTIVE AND RESTRICTIVE COVENANTS.

- - -

WHEREAS, the parcel of real property located at 2430 West Avenue ("Property"), tax account no. 3350-3500, as more particularly described in Exhibit A attached hereto and made a part hereof, was conveyed to the City of Norfolk ("City") by a Special Commissioner's Deed executed and delivered pursuant to a decree entered by the Circuit Court of the City of Norfolk in accordance with the provisions of Section 58.1-3970.1 of the Code of Virginia, 1950, as amended; and

WHEREAS, Section 2(5) of the Norfolk City Charter provides the City with broad authority for the disposition of its real property; and

WHEREAS, the City has determined that the Property is not needed for any particular use or purpose of the City, that

it is a continuing financial burden on the City, and that the public interest is best served by selling the Property through an online real estate auction ("Auction"); and

WHEREAS, the City has conducted an Auction for the sale of the Property at which Marshall Builders USA LLC ("Buyer") has been determined to be the high bidder, having bid the sum of 16,500.00, and having agreed to pay all applicable associated recording fees and taxes, in accordance with the Auction terms and conditions, a copy of which is attached hereto as Exhibit B; and

WHEREAS, the City desires to convey, and the Buyer desires to acquire, the Property via, and in accordance with Exhibit B, and with a Special Warranty Deed that will be recorded in the Clerk's Office of the Norfolk Circuit Court; now, therefore,

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

Section 1:- That the sale and conveyance of the Property, as described in Exhibit A, to the Buyer for the total sum of \$16,500.00, upon the terms and conditions set out in Exhibit B, is hereby authorized and approved.

Section 2:- That the City Manager, and the other proper officers of the City are, upon the receipt of the sum of \$16,500.00, authorized to execute and record a Special Warranty Deed, substantially in the form of Exhibit C attached hereto, and to do all other things necessary and proper to effect the conveyance of the said Property to the Buyer, including any establishment, modification, revision or release of the Protective and Restrictive Covenants as the City may, in its sole discretion, deem appropriate and to advance the payment of the associated recording fees and taxes on behalf of the Buyer, the funds for which

shall be collected from the Buyer in advance of recording.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Special Warranty Deed, as may be deemed advisable by the Norfolk City Attorney, to carry out the intent of the Council as expressed herein.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

- Exhibit A - Legal Description (1 page)
- Exhibit B - Terms and Conditions (4 pages)
- Exhibit C - Special Warranty Deed (5 pages)

EXHIBIT A TO ORDINANCE

2430 West Avenue
Legal Description

THAT certain one (1) lot of land, located and situated in the City of Norfolk, Virginia, being shown on the Map of "Lindenwood" of record in the Clerk's Office of the Circuit Court of the City of Chesapeake (formerly Norfolk County), Virginia in Map Book No. 2 at page 14 and 15, as lot six hundred and thirty four (634), said lot being bounded as follows:

COMMENCING at the southeastern intersection of West Avenue with Norfolk Street, now Norworld Street, thence running Easterly along the South side of Norfolk Street, now Norworld Street, one hundred (100) feet to the western boundary of lot number 639, thence southernly along the western boundary of lot number 639, twenty five (25) feet, thence westerly and parallel with Norfolk Street, now Norwold Street, one hundred (100) feet to the eastern side of West Avenue and thence northerly along said eastern side of said West Avenue twenty five (25) feet to the point of beginning.

IT BEING the same property conveyed to the City of Norfolk by Special Commissioner's Deed from Alfred Bernard on behalf of Nannie T. Parkes, et al, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument No. 050046638 on November 3, 2005.

EXHIBIT B TO ORDINANCE
TERMS AND CONDITIONS

OF THE CITY OF NORFOLK ONLINE REAL ESTATE AUCTION

City of Norfolk, Virginia

Effective Date: September 9, 2022

Incorporation by Reference of Terms and Conditions. The following Terms and Conditions are specific to this City of Norfolk online real estate auction and are applicable to all bidders on our marketplace. **All bidders and other participants of this auction do hereby acknowledge and agree they have read and fully understand these terms and conditions and agree to be bound by them.**

REGISTRATION FOR AUCTION

To become a qualified participant in the online auction (a "Bidder"), you must register to bid through the online auction website at www.govdeals.com. You must complete the Norfolk Bidder Application. To bid on a **particular** property, you must submit through the GovDeals online platform a payment of a "Bidder Security Deposit" of one thousand five hundred dollars (\$1,500.00) for each property that you intend to bid on. You must make your payment of the Bidder's Security Deposit before you will be approved as a Bidder at the auction. By registering to bid at the auction, you are affirming: 1) That you acknowledge and agree to the terms and conditions for this auction as stated herein; 2) That you are not delinquent on any City of Norfolk real estate or other taxes or fees; and 3) That you have no outstanding code violation on other property you own in the City of Norfolk.

Please be advised that, should any registrant be an employee of the City of Norfolk or a member of any of the City's various Boards or Commissions established by the Norfolk City Code or the Norfolk City Council, certain provisions of the Virginia Conflicts of Interest Act (Va. Code § 2.2-3100 et seq.) may limit or prohibit the ability of such persons to enter into a contract with the City for the purchase of any property listed in this auction.

PROPERTIES

The City of Norfolk ("City") is the owner in fee simple absolute of certain real property that is listed for the online auction, together with all rights and appurtenances thereunto pertaining ("Property" or "Properties"). Along with the addresses of the Properties listed for auction, there will be additional information related to each Property. The additional information may include legal descriptions, photos, certain terms and conditions, disclaimers, and may include special City requirements ("**Property Purchase Requirements**").

Each of the Properties will be sold separately through the online auction and as to each of these Properties the City makes no representations and no warranties of any kind (except for the special warranty contained in the deed), including, but not limited to, making no warranty, guaranty or representation, expressed or implied, as to access (vehicular or actual), zoning, status or availability of utilities, flood zone status, trees, merchantability or fitness for any purpose of the property offered for sale, or as to any of the improvement or structures thereon.

The Properties are sold "AS IS, WHERE IS", in gross and not by the acre, and these Properties are subject to, as provided by law and without limitation, restrictions, conditions, easements, liens or encumbrances

Last Updated: 11/1/2022

Attachment: Exhibit B to Ordinance (Conveyance of 2430 West Avenue)

record, possible rights of parties in possession, encroachments, overlaps, gaps and gores, deficiency in quantity, all questions of boundaries, location and acreage which a current and accurate survey would disclose, roadways, environmental and wetland matters, unrecorded easements, matters which would be disclosed by an inspection of the premises, or any other matter of record or not of record. Further, the City of Norfolk does not warrant or convey title to any personal property that might be on the Property (or with any improvement or structure located on the Property). Personal property includes, without limitation, such items as storage buildings, appliances, window treatments, furniture, automobiles, etc. All parcels are bought at the purchaser's own risk. In short, these properties are sold "as is," "with all faults," and without any representation or any warranty of any kind, nature, or description.

Each of the Properties has been reviewed to determine that it is a buildable lot under the applicable provisions of the City's Zoning Ordinance. An official, legally binding determination, in the form of a "Buildable Status" letter, will be made available upon request.

All Bidders do hereby acknowledge and agree that they are not entitled to any payment for loss of profit or any other money damages – special, direct, indirect or consequential as a result of participation of any kind in the online auction and that the City shall not be liable for any latent or patent defects that may exist in or on the Property.

CONDUCT OF THE AUCTION

The properties are offered for sale through the online auction to such Bidders in accordance with all legal requirements including all applicable Fair Housing laws. The City and Govdeals.com reserve the right to deny permission to bid or to terminate the right of any individual, or entity, to bid at the auction if the Bidder violates the Terms and Conditions of the auction or otherwise interferes with the auction.

The Properties will be listed publicly on the www.govdeals.com website for review by potential Bidders for a minimum of **30 days**. During this time potential Bidders will be able to perform, at their own expense, their due diligence, submit any documentation to meet any Property Purchase Requirements that may apply to a particular Property, and present their questions electronically for response. The City of Norfolk staff members will provide responses to all relevant questions regarding any particular Property listed on the online auction website.

In order to bid in the auction you must, prior to the auction opening, do the following:

- Register to bid through the online auction website at www.govdeals.com;
- Complete and submit the Norfolk Bidder Application;
- Submit a payment of \$1,500.00, as the Bidder Security Deposit, for each property on which a bidder intends to bid;

If any of the above steps are not completed, you will not be able to participate in the auction.

The auction will be open for bidding for **7 days**. At the end of the 7-day bidding period, City Staff will review the bids, determine the highest bid and assess the highest bidder's ability to meet specific Property requirements as applicable. In addition, City Staff will vet the highest bidder to ensure they meet all eligibility requirements established for the auction, including but not limited to, being current on all taxes and fees owed by them, and in compliance with all City regulations. The City reserves the right to reject any and all bids. As to the auction of any particular Property, a fully vetted eligible highest bidder will be considered a "Successful High Bidder". Note that nothing in this action, including the

determination of the Successful High Bidder, constitutes an offer to sell or acceptance of an offer for the purchase land.

Once a Successful Highest Bidder is determined for a particular auctioned Property, all Bidder Security Deposits received (including that received from the Successful High Bidder) shall be released and made available for refund through the GovDeals online platform. However, the refund of the Bidder Security Deposit requires the completion and submission of a special form to be submitted as noted and instructed per the attached link [here](#).

The City Attorney's Office will prepare and advance, for Norfolk City Council review and consideration, an ordinance authorizing the sale of each of the particular Properties to each of the respective Successful Highest Bidders for which the auction received an acceptable bid (the "Ordinance"). The City, acting by and through the Norfolk City Council, reserves the right to reject and decline to approve any and all bids, including that of the Successful Highest Bidder.

In the event the Ordinance is adopted by the Norfolk City Council, it shall not be effective until 30 days after the date of adoption. At that time, and not before, the amount bid by the Successful High Bidder shall be deemed an offer to purchase and shall also be deemed accepted by the City.

PAYMENT

Upon the effective date of the Ordinance approving the sale, the City Staff will accept the bid through the GovDeals online platform. The Successful High Bidder will receive from GovDeals a "**Certificate of Sale**" confirming and outlining the accepted bid. The Successful High Bidder will have **5 business days**, after the acceptance of the bid and receipt of the Certificate of Sale, to make and complete "Full Payment" for the particular Property through the online platform. Successful High Bidder of more than one Property must tender separate payments for each parcel.

"Full Payment" must include the following, as will be noted on the **Certificate of Sale** issued to the Successful High Bidder ("Full Payment"):

- The High Bid
- Payment of deed recording fees and taxes, which will be calculated by the City Attorney and added to the High Bid. Verifiable evidence of real estate transfer tax exemption status must be provided to the City Attorney within 24 hours of the close of the auction and before the required Full Payment is made.
- Payment of the Auction Fee, in the amount of 5.0% of the respective successful high bid, which amount shall also be added to the high bid.

With the receipt of the Full Payment, the Successful High Bidder will receive a formal **Bill of Sale**. Following the City's receipt of the full electronic payment from GovDeals (usually received by the City within five to ten (5 to 10) days of the full payment), the City Attorney's Office will prepare the Special Warranty Deed, have it executed on behalf of the City and then record it in the Norfolk Circuit Court Clerk's Office to transfer title to the Property to the respective Successful High Bidder. In the event the Special Warranty Deed includes the modification, revision or release of certain Protective and Restrictive Covenants, the Successful High Bidder will be required to execute the deed as well and will be so notified by the City Attorney's Office as to where and when to sign it.

Last Updated: 11/1/2022

If the Successful High Bidder fails or refuses to tender the Full Payment when due, the Successful High Bidder will be in breach of the Online Auction Terms and Conditions. Upon such a breach, the City may treat the particular breached sale as canceled, and, at the option and discretion of the City, may either re-auctioned the Property or seek to sell the Property to the next highest bidder in that auction, and request and obtain, by amended Ordinance, appropriate Norfolk City Council authorization to do so. Further, the City may prohibit said breaching Successful High Bidder from participation in any future online auction. Th.

TRANSFER OF TITLE & REQUIREMENTS

The City will convey to the Successful High Bidder by special warranty deed, subject to all applicable easements and restrictive covenants of record.

The Successful High Bidder acknowledges and agrees that the conveyance may also contain certain restrictive covenants as noted in the **Property Purchase Requirements**, defined above, for each particular Property. Such restrictive covenants shall be bound to and run with the title to the Property.

Construction of a residential home on the property must start within 9 months after the date of transfer or the deed and must be completed within 12 months after that construction start date. The date of completion of construction under this term shall be that date that a certificate of occupancy has been issued for the home.

In the event that the Successful High Bidder completes the purchase of the property and, thereafter, fails to comply with one or more of the restrictive covenants of record that are recited in the Special Warranty Deed, the City, as beneficiary for those covenants, may elect to enforce such noncompliance by initiating legal action to recover liquated damages in the amount of \$5,000 for each covenant violated.

The Successful High Bidder shall be responsible for paying any and all taxes associated with the Property and owed after the date of the transfer of title (date of recordation of the Special Warranty Deed) as they come due.

Attachment: Exhibit B to Ordinance (Conveyance of 2430 West Avenue)

EXHIBIT C TO ORDINANCE

Prepared by: Office of the Norfolk City Attorney
Alex H. Pincus, Assistant City Attorney, VSB #29180
Return to: Office of the Norfolk City Attorney
810 Union Street, Suite 900
Norfolk, VA 23510
Tax Map Reference No: 3350-3500
Assessed Value: \$16,500.00
Consideration: \$16,500.00
Property Address: 2430 West Avenue, Norfolk, Virginia 23504

This deed is exempt from the recordation taxes imposed
by Section 58.1-802 of the Code of Virginia, 1950, pursuant to
Sections 58.1-811(C)(4).

THIS DEED, made and entered into this ____ day of _____, 2022, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia, **Grantor**, and **MARSHALL BUILDERS USA, LLC**, a Virginia limited liability company, **Grantee**, whose address is _____.

WITNESSETH:

WHEREAS, the Grantor conducted an auction for the sale of certain property in the City of Norfolk, Virginia, located at 2430 West Avenue and the Grantee was determined to be the successful high bidder at said auction;

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey, with Special Warranty of Title, unto the Grantee, the following described property, to-wit:

THAT certain one (1) lot of land, located and situated in the City of Norfolk, Virginia, being shown on the Map of "Lindenwood" of record in the Clerk's Office of the Circuit Court of the City of Chesapeake (formerly Norfolk County), Virginia in Map Book No. 2 at page 14 and 15, as lot six hundred and thirty four (634), said lot being bounded as follows:

COMMENCING at the southeastern intersection of West Avenue with Norfolk Street, now Norworld Street, thence running Easterly along the South side of Norfolk Street, now Norworld Street, one hundred (100) feet to the western boundary of lot number 639, thence southerly along the western boundary of lot number 639, twenty five (25) feet, thence westerly and parallel with Norfolk Street, now Norwold Street, one hundred (100) feet to the eastern side of West Avenue and thence northerly along said eastern side of said West Avenue twenty five (25) feet to the point of beginning.

IT BEING the same property conveyed to the City of Norfolk by Special Commissioner's Deed from Alfred Bernard on behalf of Nannie T. Parkes, et al, recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument No. 050046638 on November 3, 2005.

The subject property is expressly subject to the Declaration of Protective and Restrictive Covenants recorded in the Clerk's Office of the Circuit Court of the City of Norfolk on December 9, 2005 as Instrument No. 050052354, which Protective and Restrictive Covenants are incorporated herein as if fully set forth.

Further, consistent with the Grantee's acceptance of the Terms and Conditions of the Grantor's Online Real Estate Auction, the Grantee, as part of the consideration for and acceptance of this conveyance, does hereby agree on behalf of itself, its successors and assigns, to the following revisions to the Protective and Restrictive Covenants:

1. Section A. is hereby revised as follows:

- a. Section A. 1. is hereby revised to include the additional requirement that Grantee agrees to meet with the local Civic League and to present to it a building plan that is in accordance with the corresponding Neighborhood Plan Book, if any, unless otherwise approved by and through the Grantor's Design Assistance Program.
- b. To include the following additional subsection:
 5. That construction upon the property conveyed herein shall be limited to a single-family, owner-occupied dwelling, for a period of seven (7) years from the formal date of the issuance of the Certificate of Occupancy.

2. Section B. is revised as follows:

- a. Section B.2. is hereby removed in its entirety.

- b. Section B.3. is hereby revised to include the additional requirements as follows:
 - i. Said construction plan must include that Grantee provide for all building plans and all building materials be approved through the City of Norfolk’s Design Assistance Program.
 - ii. Said construction shall include the upgraded, and installed to code, Americans With Disabilities Act (ADA) approved and qualified Sidewalk Ramp at the corner of Lindenwood and West Avenue.

c. Section B.4. is hereby revised to replace the current language, in its entirety, with the following:

Grantee agrees to provide that construction shall start within nine (9) months from the date of recordation of this Special Warranty Deed conveying the property to Grantee (“Construction Start Date”) and must be completed, as evidenced by a Certificate of Occupancy, within twelve (12) months from the Construction Start Date.

3. Section E. is hereby revised to remove the Grantor’s right of reverter and to add the following additional covenant:

In the event of the Grantee’s, its successor’s and/or assign’s failure to comply with any one or more of the Protective Restrictive Covenants, as amended herein, the Grantor/City, as beneficiary may elect to enforce such noncompliance by initiating legal action to recover liquidated damages in the amount of Five Thousand and 00/100 dollars (\$5,000.00) for each covenant violated.

4. All other covenants and restrictions shall remain in full force and effect.

This conveyance is further made subject to any easements, restrictions and reservations contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title, which have not expired by a time limitation contained therein or have otherwise become ineffective and to matters visible upon inspection.

IN WITNESS WHEREOF, the Council of the City of Norfolk, Virginia, pursuant to Ordinance # _____ duly adopted on _____, effective _____, has caused the proper officers of the City of Norfolk, to affix their signatures and seals hereto.

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk

**COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:**

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the _____ day of _____, _____, do hereby certify that Dr. Larry H. Filer II, City Manager and Richard A. Bull, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Deed, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2022.

Notary Public
Registration No.: _____

**APPROVED AS TO FORM
AND CORRECTNESS:**

Assistant City Attorney

GRANTEE:

MARSHALL BUILDERS USA, LLC

By: _____
Name (Printed): _____
Title: _____

**COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:**

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the _____ day of _____, _____, do hereby certify that _____, as Grantee, whose names as such are signed to the foregoing Deed, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2022.

Notary Public
Registration No.: _____