



CLARKSVILLE CITY COUNCIL SPECIAL SESSION

DECEMBER 17, 2020, 4:30 P.M.

IN AN EFFORT TO FACILITATE THE CONTINUED RESPONSE TO THE CORONAVIRUS DISEASE (COVID-19), THIS MEETING WILL BE CONDUCTED VIA GOOGLE MEETS AND LIVE STREAMED ON CITYOFCLARKSVILLE.COM

AGENDA

1) CALL TO ORDER *Mayor Joe Pitts*

2) PRAYER *Mayor Pro Tem David Allen*

PLEDGE OF ALLEGIANCE *Councilman Ron Erb*

3) ATTENDANCE *City Clerk*

4) APPROVAL OF ELECTRONIC MEETING

“In order to comply with the technical aspects of the Governor’s Executive Order regarding holding open meetings in a forum other than in the open and in public, this governing body determines that meeting electronically is necessary to protect the health, safety, and welfare of its citizens due to the COVID-19 outbreak.”

5) **ORDINANCE 49-2020-21** (Second Reading) Amending the Official Code pertaining to authority of City Security Officers *Councilman Henley*

6) **ORDINANCE 53-2020-21** (First Reading) Amending the FY21 Operating and Capital Budget for the Governmental Funds for Freedom Point Remediation *Mayor Pitts*

7) **ORDINANCE 54-2020-21** (First Reading) Authorizing a contract for purchase of Roxy Regional Theater property *Mayor Pitts*

8) **RESOLUTION 44-2020-21** Approving the City agreeing to forego seeking discretionary costs in exchange for no appeal in the Marquis v. City case *Mayor Pitts*

9) **ADJOURNMENT**

AN ORDINANCE AMENDING THE OFFICIAL CODE, PART II (CODE OF ORDINANCES) PERTAINING TO AUTHORITY OF CITY SECURITY OFFICERS

WHEREAS, the City Council finds that the best interests of the City would be served by providing specific authority to City Security Officers to enforce certain provisions of the City Code, to include the issuance of trespass notices, and citations for violations of certain City Code provisions to persons who commit such civil ordinance violations while on City owned property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

(1) That **City Code, Title 1 (Administration, Officers, and Personnel), Chapter 9 (City Court)** is hereby amended by adding a new **Section 1-913. Authority of City Security Officers to issue citations for violations of City Ordinances or City Code** as follows:

Section 1-913. Authority of City Security Officers to issue citations for violations of City Ordinances and City Code.

City Security Officers appointed by the Mayor and employed by the City shall have authority to issue civil citations to any person(s) who commit any violation of City Code Section 2-401, or Title 10 (Offenses – Miscellaneous), while on City owned property. The City Court shall have jurisdiction to hear and decide such cases, and to impose civil penalties up to and including FIFTY DOLLARS AND ZERO CENTS (\$50.00), and any lawfully authorized courts costs or taxes, upon those found to be in violation.

(2) That **City Code, Title 2 (Alcoholic Beverages), Chapter 4 (Use and Sale of Alcoholic Beverages in City Parks), Section 2-401 (Use or sale of alcoholic beverages in city parks; ejection)** is hereby amended by deleting said section in its entirety and substituting therefor the following:

Section 2-401. Use or sale of alcoholic beverages in city parks; ejection.

It shall be unlawful for any person, organization, association or entity to possess, use, consume, sell, distribute or otherwise provide any alcoholic beverage while upon, on, or inside the boundary of any city park or recreational center or facility, except may otherwise be provided in this chapter. Any person, organization, association or entity in violation of this chapter, or other state laws of general application, or local ordinances, may be required to leave the premises by any employee of the city department of parks and recreation, **or by any City employed Security Officer**, and ejected and removed from the premises by any city law enforcement officer. **It shall be unlawful, a trespass, and a violation of this section, for any person, organization, association or entity to refuse to leave the premises upon request by any employee of the city department of parks and recreation, or by any City employed Security Officer, or City law enforcement officer.**

(2) That **City Code, Title 2 (Alcoholic Beverages), Chapter 4 (Use and Sale of Alcoholic Beverages in City Parks), Section 2-402 (Citation; city court adjudication; assessment of civil fine)** is hereby amended by deleting said section in its entirety and substituting therefor the following:

Section 2-402. Citation; city court adjudication; assessment of civil fine.

Any city law enforcement officer **or City employed Security Officer**, is hereby empowered to issue a citation to any person for any violation of any of the provisions of this chapter. Citations issued for violation of any of the provisions of this chapter shall be tried in the city court. The city court judge shall determine whether a violation has occurred and shall assess a civil monetary fine as penalty against any person convicted of violating any of the provisions of this chapter, said fine to be in an amount of fifty dollars (\$50.00) for each violation.

(3) That **City Code, Title 9 (Motor Vehicles and Traffic), Chapter 1 (General), Section 9-116 (Violation of traffic regulations a misdemeanor)** is hereby amended by deleting said section in its entirety.

(4) That **City Code, Title 10 (Offenses - Miscellaneous), Chapter 1 (In General)** is hereby amended by adding a new **Section 10-102 (Authority of City law enforcement officers and City employed Security Officers)** as follows:

Section 10-102. Authority of City law enforcement and City Security Officers.

City law enforcement officers and City employed Security Officers appointed by the Mayor shall have authority to issue civil citations to any person(s) who commit any violation of any provision of Title 10 (Offenses – Miscellaneous), while on City owned property.

FIRST READING:

December 3, 2020

SECOND READING:

EFFECTIVE DATE:

ORDINANCE 53-2020-21

AN ORDINANCE AMENDING THE 2020-21 OPERATING AND CAPITAL BUDGET (ORDINANCE 39-2020-21) FOR THE GOVERNMENTAL FUNDS IN THE AMOUNT OF \$250,000 FOR THE FREEDOM POINT REMEDIATION CAPITAL PROJECT

WHEREAS, Liberty Park was developed to include Wilma Rudolph Event Center, Freedom Point, dog park and more. The previously constructed Freedom Point area is need of remediation; and

WHEREAS, After several years of working with previous contractors the City reached a negotiated settlement of \$625,000 to remediate the structural issues at Freedom Point; and

WHEREAS, Parties understood the settlement would not be sufficient to pay for the work necessary for structural integrity of the facility; and

WHEREAS, Timing of the repairs is critical due to tides and use of the facility; and

WHEREAS, Work of this nature has many potential unknowns due to underwater work and soil work, a cost was difficult to identify until bids were received.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

The following budget amendment be made:

Capital Projects Fund

Liberty Park Remediation			
40450003-4450-17505	Construction Services	Increase	\$250,000

BE IT FURTHER ORDAINED that the source funding for the \$250,000 shall be from debt issuance.

FIRST READING:

SECOND READING:

EFFECTIVE DATE:

ORDINANCE 54-2020-21

AN ORDINANCE AUTHORIZING THE CITY'S PURCHASE OF THE ROXY THEATER PROPERTY

WHEREAS, the City Council finds that the Roxy Theater is an esteemed part of Clarksville's history; that the Roxy Theater building retains significant architectural significance, and the Roxy Theater plays a central and critical role in providing educational services in the fine arts, and entertainment to the general public, and adds tremendous value to the culture of our community; and

WHEREAS, the City Council finds that the Roxy Theater building is no longer large enough to accommodate the needs of the community and its children; and

WHEREAS, the City Council finds that the Roxy Productions, Inc. cannot afford to make necessary repairs and / or maintenance to the existing building, and is committed to constructing a new building for the performing arts and community events featuring the arts of all types while maintaining key architectural and historical features of the current building; and

WHEREAS, the City Council finds that the best interests of the City and its residents and children would best be served by the City purchasing the existing Roxy Theater building, and then re-building a new, high quality, expanded, and more efficient Roxy Theater, at a fair market value purchase price of \$810,000.00, as determined by a reputable appraisal firm, and then leasing the new Roxy Theater to Roxy Productions, Inc. or successor / assignee, in order to operate and manage the Roxy Theater and provide high quality fine arts educational and entertainment programming.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

That the purchase by the City of the Roxy Theater property from owner Roxy Productions, Inc., to include a separate parking parcel adjacent thereto also owned by Roxy Productions, Inc., is hereby approved, in accordance with the terms and conditions of the real estate purchase and sale agreement attached hereto as Exhibit A, for a purchase price not to exceed Eight Hundred and Ten Thousand and 00/100 Dollars (\$810,000.00), plus reasonable settlement costs and fees, and the Mayor and City Attorney are hereby authorized to execute all necessary documents required to effectuate the purchase of said properties.

FIRST READING:

SECOND READING:

EFFECTIVE DATE:

Contract for Sale and Purchase of Real Estate

THIS CONTRACT FOR SALE AND PURCHASE OF REAL ESTATE is made and entered into this _____ day of _____, 2020, by and between ROXY PRODUCTIONS, Inc., the (“Seller”), and the CITY OF CLARKSVILLE, Tennessee, a municipal corporation and political sub-division of the State of Tennessee, (the “Purchaser”).

WITNESSETH:

1. PROPERTY

Sellers, in consideration of the mutual covenants and obligations herein, do hereby agree to convey to Purchaser, and Purchaser agrees to purchase from Sellers, at the consideration of the Purchase Price and upon the terms and conditions hereof, the following described real property, hereinafter referred to as the “Property”:

Parcel One (1) and Parcel 30 (Thirty) of tax map and group number 66G-K, and being the same properties conveyed to Roxy Productions, Inc. as recorded in Official Record Book Volume 486 Pages 1706 – 1708, and Volume 1160, Pages 1875-1876.

Those certain tracts or parcels of real estate in Montgomery County, Tennessee, being located at 100 Franklin Street, together with all appurtenances, rights, privileges, easements, and advantages belonging thereto.

2. CONSIDERATION AND PAYMENT

2.1. Subject to the adjustments provided for herein and the other terms and provisions of this Contract, Purchaser agrees to pay, and Sellers agree to accept as full consideration for the conveyance of the Property, the sum of EIGHT HUNDRED AND TEN THOUSAND DOLLARS AND ZERO CENTS (\$810,000.00) (the “Purchase Price”), payable at Closing in immediately available funds prior to 5:00 p.m. Central Time on the date of closing.

2.2. No Earnest Money shall be paid under this Contract.

3. SURVEY AND TITLE APPROVAL

3.1. A survey and surveyor’s certificate will be prepared, at Purchaser’s expense, by a licensed surveyor acceptable to Purchaser. The survey shall be made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys for a Class A survey. Such survey shall show the total area of the Real Property in square feet, easements, if any, location of adjoining streets and rights of way, building setback lines, and such other details as may be required by Purchaser. Once prepared, the survey description will become a part of this Contract identified as *Exhibit A*.

3.2. Purchaser and Seller shall have ten (10) business days after receipt of the survey within which to review same. If any incorrect boundary lines, defects, or other matters objectionable to either Purchaser or Seller are disclosed by the survey, said party shall give the other party written notice of same prior to the expiration of such ten (10) day business period. The parties shall be allowed a reasonable time, not in excess of thirty (30) days, within which to cure such defects; provided, however, that in no event shall the cure period extend beyond the Closing Date without the express written agreement of the parties. If the defects are not timely cured, the parties may waive such defects and proceed to close, or the parties may terminate this Contract by providing written notice to all parties and the closing agent.

3.3. Sellers shall furnish to Purchaser, at Purchaser's expense, an ALTA owner's title insurance policy, with a title insurance company acceptable to Purchaser, in the amount of the purchase price hereof, insuring marketable fee simple title to the real property in Purchaser. Said title insurance policy is to contain no exceptions, except an exception for real property taxes for the year in which closing occurs and any utility easements of the nature described above. It is specifically understood that said title insurance policy shall contain no survey exception or exceptions for mechanics' or materialmen's liens or for parties in possession. All persons or entities necessary to convey title as hereinbefore stated shall join in the conveyance of the Property, and Sellers shall execute and deliver all instruments and documents necessary to convey title as required herein, and such as may be reasonably requested by Purchaser.

4. CLOSING COSTS

4.1. Seller shall be responsible for all expenses incurred by Seller in connection with or relating to Seller's satisfying the terms and conditions hereof.

4.2. Purchaser shall be responsible for the costs and expenses of acquiring an owner's title insurance policy; all transfer and recording fees, costs, and taxes; the costs of the survey; and all expenses incurred by Purchaser in connection with or relating to Purchaser's satisfying the terms and conditions hereof. However, in the event of default by Seller, Seller shall reimburse Purchaser for the costs thereof in addition to any other fees incurred by Purchaser up to the date or event of default.

5. ADJUSTMENTS

5.1. Real and personal property ad valorem taxes upon the Property assessed for the year in which Closing occurs shall be prorated as of the Closing Date. Any back taxes assessed for any year prior to the year in which Closing occurs shall be paid in full by Seller at Closing, including all delinquent and/or interest charges. Special assessments levied or pending shall be the responsibility of Seller.

5.2. All other expenses of operating or owning the Property shall be prorated as of the Closing Date, those paid or accruing prior to the Closing Date being Seller's responsibility and those accruing on and after the Closing Date being Purchaser's responsibility.

6. RISK OF LOSS

Seller shall bear the risk of loss or damage to the Property until transfer of title to the Property to Purchaser.

7. CONDEMNATION

7.1. If all or any part of the Real Property is subject to a pending or threatened condemnation or similar proceeding or is otherwise taken through any power of eminent domain prior to Closing, Purchaser may elect to:

(a) Terminate this Contract and have the Earnest Money immediately returned, in which case each of the parties shall be released from further liability to the other, or

(b) Purchase the Real Property under the terms of this Contract, in which event Seller shall assign to Purchaser all of Seller's interest in and to any condemnation award.

7.2. Purchaser's election under the preceding Paragraph 7.1 shall be made in writing to Seller at any time within ten (10) days of Purchaser's receipt of Seller's written notice of such taking or pending or threatened condemnation or similar proceeding.

8. CONVEYANCES

At Closing, Seller shall convey, assign and transfer to Purchaser, by such instruments and assignments as may be acceptable to Purchaser good and marketable fee simple title to the Real Property, without exceptions except as expressly provided herein, by a good and valid General Warranty Deed. Seller shall execute and deliver such other documents and instruments of assignment and transfer as Purchaser may require.

9. INSPECTION PERIOD

9.1. Purchaser shall have the right to inspect and approve all aspects of the Property for a period of thirty (30) days (the "Inspection Period") commencing with the full execution of this Contract by both parties. If for any reason whatsoever Purchaser is not completely satisfied with any aspect of the Property, Purchaser shall have the right to terminate this Contract, at Purchaser's sole and absolute discretion, by notice to Seller prior to the expiration of the Inspection Period. In such an event, each of the parties shall be released from further liability to the other, provided that Purchaser shall deliver to Seller all reports, data and information regarding the Property acquired during the Inspection Period.

9.2. Purchaser and Purchaser's agents, employees, and representatives may inspect the Property, and shall have full and unrestricted access and right of entry thereto during the Inspection Period and through the Closing. During the Inspection Period, Purchaser at its sole cost and expense, shall have the right at any time to make or have made soils and stability tests, borings, hydro-geologic, drainage, percolation, and other engineering studies, to be used in the determinations set forth in Paragraph 9.1. Seller shall cooperate in the execution of all applications and forms required by Purchaser during the Inspection Period.

10. REPRESENTATIONS AND WARRANTIES

10.1. Seller is the true and lawful owners of the Property and have full power and authority to enter into this Contract and to convey such interest in the Property. Seller's execution of this Contract and performance hereunder is not in conflict with or a breach or default under any other agreement to which Seller is bound.

10.2. *[This section intentionally left blank.]*

10.3. Seller has not received any notice that the Property is not in compliance with any federal, state or local statute, ordinance, rule, regulation, requirement or code, including without limitation health and environmental laws.

10.4. With respect to the operation, use, and ownership of the Property, there is no existing or, to the best of Seller's knowledge, threatened default or dispute under the terms of any agreement or contract which materially and adversely affects the Property or its value.

10.5. There are no encumbrances, liens, or charges of any kind upon the Property which will not be satisfied and discharged in full by Seller and released, at or before the Closing, in form satisfactory to Purchaser.

10.6. There has been no storage, disposal, treatment or release of hazardous substances on the Property during the period of Seller's ownership, and to the best of Seller's knowledge there has been no storage, disposal, treatment or release of hazardous substances during the period prior to Seller's ownership. To the best of Seller's knowledge, no part of the Property is being used, or has ever been used, for any manufacturing, handling or other process involving hazardous substances. The terms as used herein, including but not limited to "hazardous substances," shall have the

broadest meaning given under applicable state and federal law.

10.7. All of the covenants, representations, and warranties of the Seller made herein are and shall be continuous and continuing and all of the same shall remain true and correct in all respects through Closing and all of the same shall survive the Closing and transfer of title to the Property to Purchaser as contemplated hereunder.

11. CONTRACT DEFAULT

11.1. If Seller fails to comply with this Contract within the time specified, or if Seller breaches any covenant contained herein, or if any of Sellers' representations and warranties are untrue, Purchaser may pursue any remedies available to Purchaser at law or in equity, including without limitation (i) termination of this Contract and suit for money damages, or (ii) suit for specific performance hereof and money damages. An election by Purchaser to pursue any one or more of its available remedies at law or in equity shall in no way limit or be deemed a waiver of its rights to pursue any other remedies available.

12. CLOSING DATE AND LOCATION

12.1. The Closing shall be held on or before January 29, 2020, or at such other date as shall be mutually agreeable to Purchaser and Seller. The Closing may be extended by written agreement of the parties.

12.2. The sale of the Property shall be closed at the office of Larry Rocconi, Cunningham, Mitchell & Rocconi, 308 South Second Street, Clarksville, Tennessee 37040. THE PARTIES CONSENT TO THE USE OF A SINGLE CLOSING AGENCY AND WAIVE ANY CONFLICTS ARISING FROM THE USE OF A SINGLE CLOSING AGENCY.

12.3. At Closing, the Purchase Price, all documents herein contemplated for the conveyance of the Property, and the payment of the Purchase Price, and all other necessary documents and instruments shall be executed and/or delivered. Possession of the Property shall be transferred to Purchaser on the Closing Date.

13. NOTICES

All notices required herein must be written and shall be deemed to have been validly given when deposited postage prepaid either (i) with a nationally recognized overnight courier or (ii) in the United States Mail, Certified, Return Receipt Requested, addressed to the parties as identified and set forth below:

To Purchaser:

City of Clarksville
ATTN: Mayor, Joe Pitts
One Public Square
Clarksville, TN 37040

With a copy to:

City of Clarksville
City Attorney
One Public Square
Clarksville, TN 37040

To Sellers:

Roxy Productions, Inc.
100 Franklin Street
Clarksville, TN 37040

With a copy to:

Stacy Turner, Esq.
105 South 3rd Street
Clarksville, TN 37040

14. ENTIRE AGREEMENT

This Contract constitutes the sole and entire agreement between Purchaser and Seller and no modification hereof shall be binding unless signed by both Purchaser and Seller. Representations, promises, or inducements not included in this Contract shall not be binding upon either of the parties.

15. SUCCESSORS AND ASSIGNS

This Contract shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective successors, assigns, beneficial owners and representatives.

16. NO THIRD PARTY BENEFICIARIES

Nothing contained in this Contract shall be deemed to confer any right or benefit on any person, organization, association, or entity who is not a party to this Contract, except as may otherwise be provided in paragraph nineteen below.

17. OFFER AND ACCEPTANCE

This offer may not be accepted if, prior to Seller's execution hereof, the same shall have been revoked by Purchaser. This offer may be revoked by notice to Seller as provided in Paragraph 13 hereof.

18. COMMISSIONS

The parties each warrant and represent to each other that no fee or commission is due to any broker or agent in connection with this Contract and the transactions described herein. The parties agree to mutually hold each other harmless from and against all claims for brokerage or agent commissions asserted by any party as a result of the sale and purchase of the Property.

19. MISCELLANEOUS

18.1. Time is of the essence in the performance and satisfaction of the obligations and conditions of this Contract.

18.2. At Closing, Seller shall execute a Transferor's Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code in a form satisfactory to Purchaser.

18.3. The validity, construction, interpretation and performance of this Agreement shall be governed in accordance with procedural and substantive laws of the State of Tennessee, notwithstanding any choice of law principle or rule of law to the contrary. Venue for any action relating to or arising from this transaction shall be in the Circuit Court

NOTARY PUBLIC

RESOLUTION 44-2020-21

A RESOLUTION APPROVING THE CITY AGREEING TO FORGO SEEKING DISCRETIONARY COSTS IN EXCHANGE FOR NO APPEAL IN THE MARQUIS v. CITY CASE

WHEREAS, the City has been sued by the Plaintiffs Laurie Marquis and Michael Marquis, represented by attorney Pete Olson, in a lawsuit styled as follows:

Laurie Marquis and Michael Marquis v. City of Clarksville, Defendant. Circuit Court for Montgomery County, Tennessee, Docket No. CC-17-CV-20; and

WHEREAS, the Plaintiffs' lawsuit has been dismissed by the Montgomery County Circuit Court by Order issued November 30, 2020 granting the City's Second Motion for Summary Judgment; and

WHEREAS, Plaintiffs, through their counsel, Mr. Pete Olson, have made an offer to agree to forgo an appeal of the trial court decision dismissing their case in exchange for the City forgoing pursuit and recovery of its' discretionary costs recoverable pursuant to Rule 54.04(2) of the Tennessee Rules of Civil Procedure, in the amount of \$2796.45; and

WHEREAS, the City Council finds that this settlement proposal is in the best interests of the City, and should be approved, subject to the execution of a written agreement by the Plaintiffs and their counsel, as approved by the City Attorney, memorializing said agreement, which the Mayor should be authorized to execute on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

That the Clarksville City Council hereby approves a settlement proposal whereby the Plaintiffs, Laurie and Michael Marquis, and their counsel Pete Olson, agree to forgo an appeal of the trial court decision dismissing their case in exchange for the City forgoing pursuit and recovery of its' discretionary costs pursuant to Rule 54.04(2) of the Tenn. R. Civ. P., in the amount of \$2796.45, said agreement to be memorialized in a written agreement between the parties to the lawsuit, subject to the approval of the City Attorney, and the Mayor is hereby authorized to execute same.

ADOPTED: