

RESOLUTION OF THE CITY COUNCIL

No. 525

Approved September 30, 1996

THE MAYOR
V. J. BROWN
CITY CLERK
THE COMMITTEE ON
FINANCE

WHEREAS, The City of Providence, Rhode Island (the "City") has received a written communication from Leviton Manufacturing Co., Inc. of Little Neck, New York ("Leviton") with respect to property owned by Leviton within the City and located at 234 Daboll Street (Assessor's Plat 43, Lot 570), 90 Mawney Street (Assessor's Plat 43, Lot 568), 81 Mawney Street (Assessor's Plat 49, Lot 469) and 83 Burnett Street (Assessor's Plat 49, Lot 479) (hereinafter, all of such real estate and the improvements located thereon are referred to as "the Cable Electric Property"); and

WHEREAS, The terms of such communication provide, amongst other things, that Leviton will sell the Cable Electric Property to the City for the sum of One (\$1.00) Dollar provided that the City agrees to assume certain carrying costs and provide Leviton with certain indemnification agreements with respect to the Cable Electric Property, all as provided in a certain draft purchase and sale agreement by and amongst Leviton and the City, a true copy of which is attached hereto as Exhibit A (hereinafter, the "Agreement"); and

WHEREAS, Embodied in the Agreement is a request of Leviton and the City represent that it intends to use the Cable Electric Property for public school purposes; and,

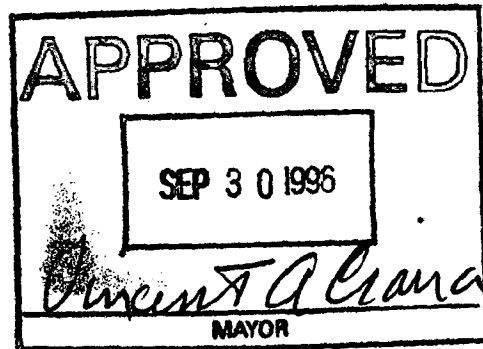
WHEREAS, The City intends to acquire, construct, renovate, rehabilitate, furnish and equip the Cable Electric Property for use as two public elementary schools; and

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council hereby approves of the terms and conditions of the Agreement attached hereto as Exhibit A.
2. That the Mayor be and he hereby is authorized to execute the Agreement for and on behalf of the City and deliver the same to Leviton and to take any and all actions and execute any and all documents necessary or desirable to implement the transaction contemplated by the Agreement.
3. This Resolution shall take effect upon passage.

THE COMMITTEE ON
FINANCE
Approves Passage of
The Within Resolution
Walter B. Bostwick
Sept. 12, 1996 Clerk

IN CITY COUNCIL
SEP 19 1996
READ AND PASSED
Frederick V. Fargnoli
PRES.
Michael R. Clement
CLERK



RESOLUTION

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3. This Resolution shall take effect upon passage.

EXHIBIT A

REVISED SEPTEMBER 11, 1996 10:00 A.M.

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement is made by and between Leviton Manufacturing Co., Inc., a Delaware Corporation (hereinafter referred to as the "Seller") and The City of Providence, Rhode Island (hereinafter referred to as the "Buyer"), as of the ____ day of September, 1996, pursuant to which the parties agree as follows:

1. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all of Seller's right, title and interest in and to the real property located in Providence, Rhode Island, described on Exhibit A and A-1 attached hereto (the "Premises"), subject to all easements and restrictions of record, and subject to real estate taxes assessed as of December 31, 1995. Conveyance shall be made by a warranty deed with respect to the property described in Exhibit A and a quitclaim deed with respect to the property described in Exhibit A-1, conveying to Buyer title to the Premises subject to encumbrances of record and sufficient to enable Buyer to obtain at its expense a policy of title insurance issued by a title company doing business in Rhode Island containing no exceptions other than the standard title policy exceptions. The Buyer represents to the Seller that the Buyer intends to use the Premises for public school purposes.

REVISED SEPTEMBER 11, 1996 10:00 A.M.

2. Full possession of the Premises, free of all tenants and other occupants, shall be delivered to Buyer at the time of delivery of the deed, at which time the Premises shall be substantially in its present condition, normal wear and tear, and damage by fire or other casualty, excepted. The Buyer acknowledges that the Seller makes no representation as to the condition of the Premises, and that the Premises are to be conveyed in "as is" condition, without any warranties whatsoever, except with respect to title.

3. The purchase price for the Premises shall be One Dollar (\$1.00), which shall be paid to the Seller at the closing.

4. It shall be a condition precedent to the closing that the Buyer obtain all approvals required by the Providence City Charter and City Code including all necessary votes of the Providence City Council to authorize the purchase of the Premises by and the performance of all obligations of the Buyer hereunder. If the Seller has not received from Buyer written notice on or before September 20, 1996 that all such approvals have been obtained, either the Seller or the Buyer shall have the option, at any time thereafter prior to a closing, to terminate the Buyer's right and obligation to purchase under this Agreement by written notice to the other.

REVISED SEPTEMBER 11, 1996 10:00 A.M.

5. After the execution of this Agreement by all parties and prior to the closing date as set forth in Section 6, the Buyer shall be permitted to enter the Premises during normal business hours and upon reasonable notice, for the purpose of making any mechanical, electrical or other inspections or surveys, at its sole expense, provided, however, that the Buyer shall defend, indemnify and hold the Seller harmless from and against any claims arising from such entry, or costs or other damages incurred by the Seller as a result thereof. It is specifically agreed that the Buyer shall not be entitled to make any structural alterations to the Premises prior to the closing without the written consent of the Seller.

6. A closing on the purchase and sale of the Premises shall take place at the offices of Winograd, Shine & Zacks, P.C., 123 Dyer Street, Providence, Rhode Island on October 10, 1996 at 10:00 o'clock a.m., unless some other time and place shall previously have been mutually agreed upon in writing or unless extended or accelerated pursuant to Section 10 of this Agreement. At the closing:

- a. The Buyer shall deliver the following to the Seller:
 - i. The purchase price of One Dollar (\$1.00); and
 - ii. A legal opinion from counsel for the Buyer, in form and substance reasonably satisfactory to Seller and its

REVISED SEPTEMBER 11, 1996 10:00 A.M.

counsel, opining that all requisite approvals for the execution and performance of this Agreement by the City have been obtained, and that this Agreement is valid, binding and enforceable against the Buyer in accordance with its terms.

- b. The Seller shall deliver the following to the Buyer:
 - i. A Deed conveying its entire right, title and interest in and to the Premises, subject to easements and restrictions of record, and subject to property taxes assessed as of December 31, 1995; and
 - ii. A Certificate of the Secretary or Assistant Secretary of the Seller certifying that the Board of Directors of the Corporation has authorized the transaction contemplated hereby.
 - iii. A legal opinion from counsel for the Seller, in form and substance reasonably satisfactory to Buyer and its counsel, opining that all requisite corporate approvals for the execution and performance of this Agreement by the Seller have been obtained.

7. If the Premises are hereafter substantially destroyed by fire or other casualty and have not been restored to their present condition by Seller prior to the closing, then either party may terminate this Agreement by written notice delivered to the other

REVISED SEPTEMBER 11, 1996 10:00 A.M.

prior to closing. The Seller shall be entitled to receive and retain any and all insurance proceeds payable by reason of any fire, casualty or other insured loss that may occur prior to the closing.

8. Within 45 days after the closing, (or if later, within 10 days after the date when the first installment of the 1996 real estate taxes is payable) the Seller shall pay to the Buyer an amount equal to the real estate taxes assessed by the City of Providence upon said Premises as of December 31, 1995, (the "1996 Real Estate Taxes) multiplied by a fraction, the numerator of which shall be 76 and the denominator of which shall be 366. Within 135 days after the closing (or, if later, within 10 days after the date when the second installment of the 1996 Real Estate Taxes is payable) the Seller shall pay to the Buyer an amount equal to the 1996 real estate taxes multiplied by a fraction, the numerator of which shall be 76, and the denominator of which shall be 366. This Provision shall survive the closing. Except as set forth in this provision, the Seller shall not be required to pay 1996 real estate taxes with respect to the Premises. In the event that the Seller shall have paid any taxes for the 1996 year to the Buyer prior to the closing with respect to the Premises, such payments shall be credited towards this obligation, and, to the extent necessary to

REVISED SEPTEMBER 11, 1996 10:00 A.M.

effectuate this provision, credited towards Seller's obligations under Section 10 of this Agreement.

9. Water charges, fire district taxes and sewer use charges, if any, shall be apportioned as of July 1, 1996, and the Buyer shall purchase any fuel oil on the Premises at the Closing from the Seller at then prevailing rates. The Buyer shall be responsible for all electricity, fuel, security and other maintenance charges

incurred by the Seller after July 1, 1996 with respect to the Premises. ^{ATTACHED HERETO AS EXHIBIT B IS A LISTING OF SUCH CHARGES THROUGH AUGUST 29, 1996.} After this Agreement has been executed, and the contingency set forth in Section 4 of this Agreement shall have passed, the Buyer may, upon 14 days' notice to the Seller, supply maintenance services (the "Workers") prior to the closing as required (but no less than 80 hours per week) to the Premises at the Buyer's sole expense, provided, however, that the Buyer shall comply with the following: i) The Buyer shall execute an indemnity agreement in a form acceptable to Seller and its counsel holding the Seller harmless from any claims for injuries to the Workers or their property, or for damage to persons or to property caused by any act or omission caused by the Workers; ii) workers' compensation insurance shall be maintained at all times covering the Workers; iii) the sole activity of the Workers on the Premises shall be the maintenance of the Premises, and they shall perform maintenance to the Premises (including, without limitation, repairs

REVISED SEPTEMBER 11, 1996 10:00 A.M.

to broken windows, doors and repair and maintenance of heating systems) satisfactory in all respects to the Seller; and iv) the Workers shall in no event permit the entry of any persons or property (including, without limitation, other employees or agents of the Buyer) without obtaining the Seller's written consent in advance of such entry. The Buyer may give the Seller fewer than 14 days' notice with respect to the provision of such services, provided that, concurrently with such notice, the Buyer pay to the Seller a fee of \$2,225.68, (which represents the costs to the Seller of receiving less than 14 days' notice).

10. The Buyer may not perform any environmental testing or studies on the Premises prior to the closing, except as provided in this Section. Promptly after the execution of this Agreement the Seller shall retain, on behalf of the Seller and the Buyer, Environmental Science Services, Inc. (or another environmental testing firm agreed upon by both parties) to perform a Phase II environmental study (the "Study") of the land comprising a portion of the Premises, excluding, however, all structures thereon (the "Land"). The expense of said study shall be shared equally, and each party agrees to pay for its share of said study promptly after receipt of an invoice therefor.

Prior to the closing, the Seller shall follow the recommendations set forth in the report of the Study. The Buyer

REVISED SEPTEMBER 11, 1996 10:00 A.M.

and the Seller shall each pay one half of all expenses up to an aggregate amount of \$200,000 in performing such recommendations prior to the closing, and the Buyer shall pay all such expenses in excess of \$200,000 and those incurred after the closing. Such pre-closing expenses shall be paid by the Buyer to the Seller (or, if the Seller so requests, to the person or entity issuing the invoice therefor) within 45 days of remittance of an invoice therefor (or for any part thereof). The Buyer shall be responsible for payment in full of all other expenses incurred in relation to the condition (environmental or otherwise) of the Premises (including the condition of the structures on the Premises). To the extent that the Seller is unable to fulfill its obligations under this Section prior to the closing date set forth in Section 6, a closing on the sale of the Premises shall be extended until the completion of the work contemplated hereby.

In the event that Seller is willing to pay to Buyer one-half of the expenses contemplated by the Study prior to the completion of such work, the Seller shall give notice to the Buyer that the closing date has been accelerated to a date no earlier than five days after the date said notice is given, in which case, at the closing, in addition to the other requirements set forth herein, the Seller shall pay the balance of its share of the costs described in this section and estimated in the Study to the Buyer.

REVISED SEPTEMBER 11, 1996 10:00 A.M.

If the reasonable and actual costs incurred by the Buyer to complete the recommendations set forth in the Study differ from the estimated costs, then, Buyer and Seller agree to adjust for such variance (subject to the limitations set forth above pursuant to which Seller shall not be required to pay in excess of one-half of \$200,000) within 30 days of the determination of the final costs of performing such recommendations. In the event of an accelerated closing described herein, the Buyer agrees that the payment described in this paragraph shall be used in performing the recommendations contained in the Study, and, notwithstanding the accelerated closing, the indemnity provisions of Section 11a shall be in effect.

11. a. Except as otherwise provided by Section 10 of this Agreement, as additional consideration for the sale of the Premises, the Buyer agrees to defend, indemnify and hold Seller harmless from and against all claims, costs, damages, expenses (including, without limitation, attorney's fees), losses, liabilities or judgments now existing or hereafter arising and relating solely to the environmental condition of the Premises prior to, at or after the Closing hereon, including, without limitation, conditions due to any oil, friable asbestos, hazardous substance, hazardous waste or other hazardous material (as defined by applicable federal, state and local laws, ordinances and

REVISED SEPTEMBER 11, 1996 10:00 A.M.

regulations, including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. 6903(5), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) and (33), and the Rhode Island Hazardous Waste Management Act of 1978, R.I.G.L. 23-19.1-4) which has been, is or is hereafter located in, or under, or about, the Premises, and including claims for environmental clean-up costs, any resulting damage to the environment, and any other claims against the Premises or against the Seller (including any liability which Seller may have for predecessors in title) arising under any Federal, State, local or other applicable environmental laws or regulations, as well as any and all other claims made against Seller due to the condition of the Premises. The provisions of this paragraph shall survive the closing.

b. As further consideration for the sale of the Premises, the Buyer agrees to defend, indemnify and hold Seller harmless from and against all claims, costs, damages, expenses (including, without limitation, attorney's fees), losses, liabilities or judgments now existing or hereafter arising as a result of claims made against Seller due to the condition of the Premises prior to, at or after the Closing hereon and for which the Buyer is not required to indemnify the Seller under Section 11a of this Agreement (and other than those expenses for which the Seller is responsible under

REVISED SEPTEMBER 11, 1996 10:00 A.M.

Section 10 of this Agreement). Notwithstanding the above, to the extent that insurance proceeds (including liability and worker's compensation insurance proceeds) are payable to or on behalf of the Seller for such claims, the Buyer shall not be required to provide such indemnification, but shall be required to provide such indemnification for amounts above coverage limits, deductibles, self-insured retentions and uninsured claims. The provisions of this paragraph shall survive the closing.

12. If at the Closing the Seller is unable to convey title or deliver possession of the Premises as herein provided the Buyer at its option on the closing date may elect either (i) to accept whatever title the Seller shall be able to transfer and convey to the Buyer, and to accept the Premises as is in whatever condition it is then in, without any warranties as to title or the condition of the Premises and without diminution of the purchase price or further recourse against the Seller, or (ii) to terminate this Agreement, in which event the deposit (if any) made by Buyer to the Seller on account of the purchase price shall be immediately refunded, the Buyer's recourse shall be limited thereto, and all of the rights and obligations of the parties hereunder (except for those obligations of the Buyer under any Indemnity Agreement executed pursuant to Section 5 of this Agreement) shall cease and this Agreement shall be deemed null and void. The acceptance of a

REVISED SEPTEMBER 11, 1996 10:00 A.M.

deed and possession by Buyer shall in any event constitute conclusive evidence of full performance and discharge by Seller of all of Seller's obligations pursuant to this Agreement, except, however, that, in the event of an accelerated closing pursuant to Section 10 of this Agreement, Seller and Buyer shall be responsible for any adjustments pursuant to the last paragraph of Section 10 of this Agreement.

b. If Buyer is in default of any of its obligations hereunder and fails to cure such default within 10 days after notice thereof is given, or if Buyer shall fail or refuse by the closing date set forth in Section 6 of this Agreement, to either close or terminate this Agreement pursuant to the provisions of paragraph 4 hereof, Seller shall have, at any time thereafter the option of terminating this Agreement by written notice to the Buyer, in which case all of the rights and obligations of the parties hereunder (except payments pursuant to this section, and the indemnity obligations of the Buyer under Section 5) shall cease. Upon a termination by Seller pursuant to this paragraph, Seller shall have the right to retain any deposit paid by Buyer to Seller, and the Buyer shall pay as damages to Seller an amount equal to the sum of: i) real estate taxes and any other assessments assessed upon said Premises as of December 31, 1995, plus water charges, fire district taxes and sewer use charges if any for the year 1996, multiplied by a

REVISED SEPTEMBER 11, 1996 10:00 A.M.

fraction, the numerator of which shall be the number of days between June 1, 1996 and the termination of this Agreement by the Seller on account of the Buyer's default, and the denominator of which shall be 366, plus ii) charges for electricity, fuel, security and all other costs of maintaining the Premises from June 1, 1996 until the termination of this Agreement.

13. Upon the purchase of the Premises by the Buyer pursuant to this Agreement, the Seller shall pay a commission, to the real estate broker, if any, to whom such commission is payable by the Seller under a written agreement with such real estate broker signed by the Seller. Any and all other finder's fees, commissions, brokers' fees or other fees or commissions payable in connection with this transaction shall be the sole obligation of the Buyer. The Buyer shall defend, indemnify and hold the Seller harmless from and against all claims, costs, damages, expenses (including, without limitation, attorney's fees), losses, liabilities and judgments arising from any claim of entitlement to any finder's fee, commission, brokers' fee or any other fee or commission in connection with the transactions contemplated by this Agreement asserted at any time by any person or entity (other than a real estate broker to whom the Seller has agreed to pay a commission in a written agreement signed by the Seller). This Provision shall survive the closing on the sale of the Premises.

REVISED SEPTEMBER 11, 1996 10:00 A.M.

14. All notices which are required or permitted to be given hereunder shall be in writing and shall be effective when mailed by certified mail, return receipt requested addressed as follows:

If to the Seller:

Leviton Manufacturing Co., Inc.
c/o Richard W. Zacks, Esq.
Winograd, Shine & Zacks, P.C.
123 Dyer Street
Providence, RI 02903

If to the Buyer:

The City of Providence
Providence City Hall
25 Dorrance Street
Providence, RI 02903
Attention: Mr. Alan Sepe
Acting Director of Public Property

With a copy to:

Bruce Sondler, Esq.
Sondler, Salvatore & DiCristofaro
400 Reservoir Ave.
Providence, Rhode Island 02907

Either party may change the address to which notices are to be sent by giving written notice thereof in accordance with this provision.

15. This Agreement merges any and all prior understandings and agreements between Buyer and Seller with respect to the Premises and shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

REVISED SEPTEMBER 11, 1996 10:00 A.M.

IN WITNESS WHEREOF, each party has caused this Real Estate Purchase and Sale Agreement to be duly executed on its behalf as of the ____ day of September, 1996.

SELLER:

LEVITON MANUFACTURING CO., INC.

By: _____

its:

BUYER:

THE CITY OF PROVIDENCE

By: _____

its:

G:\LEVITON\CABLE\DOCUMENTS\CITYP&S4.EMT

EXHIBIT A

That certain lot or parcel of land situated at the northeast corner of Burnett and Bucklin Streets in the City and County of Providence, State of Rhode Island, bounded and described as follows:

Beginning at the southwest corner of the premises herein conveyed, said point being the northeast corner of Burnett and Bucklin Streets; thence running NORTHERLY bounding westerly on said Bucklin Street for a distance of ninety (90) feet, more or less, to land now or lately of Irene B. Ouimette; thence turning and running EASTERLY bounding northerly on said Ouimette land for a distance of seventy-five (75) feet, more or less, to land now or lately of Perry Holt et al; thence turning and running SOUTHERLY bounding easterly on said Holt land to Burnett Street; thence turning and running WESTERLY bounding southerly on said Burnett Street to the point and place of beginning.

That certain parcel of land with all buildings and improvements thereon, situated in the City and County of Providence, State of Rhode Island bounded and described as follows:

Beginning at a point of intersection of the northerly line of Mawney Street with the easterly line of Bucklin Street at the southwesterly corner of said parcel, thence northerly bounding westerly on Bucklin Street, eighty (80) feet more or less to land now or lately of Alf M. Sexton, thence easterly bounding northerly on said Sexton land seventy-five (75) feet, more or less to other land of the grantors; thence southerly bounding easterly on said land, eighty (80) feet, more or less to Mawney Street, thence westerly bounding southerly on Mawney Street seventy-five (75) feet more or less, to Bucklin Street, at the point of beginning.

That certain lot or parcel of land, with all the buildings and improvements thereon situated on the southerly side of Mawney Street, in the City and County of Providence, State of Rhode Island, bounded and described as follows:

Beginning at a point in the southerly line of Mawney Street, sixty-five (65) feet, more or less, westerly from the westerly line of Bucklin Street, said point of beginning being at the northwesterly corner of land now or lately of Arthur R. Casquilha and wife; thence southerly bounding easterly in part on said Casquilha land and in part on land now or lately of Clara M. Glennon a distance of ninety (90) feet to land now or lately of Elmcrest Realty Co. Inc.; thence turning and running westerly bounding southerly in part on said Elmcrest Realty Co., Inc. land and in part on land now or lately of Phillip D. Brownell a distance of forty-five (45) feet to land now or lately of Everett F. Benton and wife; thence turning and running northerly bounding westerly on said Benton land ninety (90) feet to Mawney Street; thence turning and running easterly bounding northerly on said Mawney Street a distance of forty-five (45) feet to

EXHIBIT A-1

Beginning at the point of intersection at the northerly line of Mawney Street with the easterly line of Dexter Street at the southwesterly corner of said parcel; thence northeasterly bounding northwesterly on Dexter Street one hundred sixty-four and 40/100 (164.40) feet, more or less, to Daboll Street; thence easterly bounding northerly on Daboll Street six hundred twenty-three and 70/100 (623.70) feet, more or less, to Bucklin Street; thence southerly bounding easterly on Bucklin Street one hundred sixty and 53/100 (160.53) feet, more or less, to Mawney Street; thence westerly bounding southerly on Mawney Street six hundred fifty-nine and 80/100 (659.80) feet, more or less, to Dexter Street at the point of beginning.

EXHIBIT B

BREAKDOWN OF EXPENSES ASSOCIATED
WITH THE CABLE ELECTRIC BUILDING
SINCE JUNE 30, 1996
(as of August 29, 1996)

Electricity	\$2,812.51
Fuel	0
Security (guard service)	5,806.32
Building Maintenance (patching roof leaks, boarding broken windows, etc.)	1,790.00
water/sewer	<u>150.00</u> (estimated)
TOTAL:	\$10,558.83

In addition, taxes associated with the building were \$1,885.25.