



Office of the City Manager
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Memo

To: Members of Dublin City Council
From: Marsha I. Grigsby, City Manager *MDG*
Date: December 12, 2014
Initiated By: Terry Foegler, Director of Strategic Initiatives/Special Projects
Philip K. Hartman, Assistant Law Director
Re: Ordinance 124-14 - Authorizing the City Manager to Execute a Real Estate Purchase Agreement and the Necessary Conveyance Documentation to Acquire 2.82 Acres, More or Less, Fee Simple Interest; 0.89 Acres, More or Less, Fee Simple Interest; and 0.76 Acres, More or Less, Temporary Easement from Wendy's International Inc., and Declaring an Emergency

BACKGROUND

Within the Bridge Street District (BSD) thoroughfare plan, one of the most critical elements of the planned roadway system is the centrally located east-west circulator system that will help collect and distribute pedestrians, bicycles and vehicles within and throughout the District in this area. On the east side of the Scioto River, the northernmost leg of this circulator will be John Shields Parkway, the first phase of which has recently been constructed as part of an agreement related to a recent long-term care facility development project in the area.

A key southern portion of this BSD circulator on the east side of the Scioto River will be located just north of the current Dale Drive intersection with Riverside Drive, and will extend eastward toward Sawmill Road. A critical portion of the needed right-of-way for this segment of the circulator is a 3.71 acre strip of land located along the northern edge of the Wendy's corporate headquarters site. Once this segment is acquired, the remainder of the needed right-of-way is anticipated to be provided from previous or planned City acquisitions, as well as right-of-way that should be provided by pending private redevelopment projects. In fact, if currently planned projects move forward in the near future, the subject site would be the only remaining portion of right-of-way needed for the entire circulator on the east side of the Scioto River.

The City recently had prepared an appraisal for this segment of needed right-of-way and submitted an offer to Wendy's International for the appraised value of \$812,327. Wendy's has accepted the City's offer, with the condition that the closing be consummated by the end of this calendar year (2014). The 3.71-acre site will accommodate the signature level street improvements recently established by City Council, as well as a modest greenway along the northern edge of the right-of-way, where the property abuts the Sycamore Ridge Apartments.

This Ordinance authorizes the City Manager to enter into a purchase agreement for the right-of-way and temporary easements needed for the future construction of the southern portion of the BSD circulator for the agreed upon value of \$812,327.

RECOMMENDATION

Staff recommends that Council dispense with the public hearing and approve Ordinance No. 124-14 by emergency at the Special Meeting of Council on Monday, December 15 in order to continue moving forward with the project.

RECORD OF ORDINANCES

Ordinance No. 124-14

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT AND THE NECESSARY CONVEYANCE DOCUMENTATION TO ACQUIRE 2.82 ACRES, MORE OR LESS, FEE SIMPLE INTEREST; 0.89 ACRES, MORE OR LESS, FEE SIMPLE INTEREST; AND 0.76 ACRES, MORE OR LESS, TEMPORARY EASEMENT FROM WENDY'S INTERNATIONAL INC., APPROPRIATING FUNDS THEREFOR, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Dublin (the "City") is preparing to construct a roadway grid system in the Bridge Street District (the "Project"); and

WHEREAS, said Project requires that the City obtain certain property interest within Franklin County Parcel No. 273-008805, owned by Wendy's International Inc.(the "Grantor"), said property interest more fully described in the Exhibit "A" attached hereto; and

WHEREAS, the City and the Grantor participated in good faith discussions and have come to mutually agreeable terms for the acquisition of the necessary property interest for the sum of Eight Hundred Twelve Thousand Three Hundred Twenty-Seven Dollars (\$812,327); and

WHERE, it is necessary to appropriate funds for the acquisition of this property; and

WHEREAS, the City desires to execute necessary conveyance documentation to complete the transaction between the City and the Grantor prior to the end of the year.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring that:

Section 1. The City Manager is hereby authorized to execute all necessary conveyance documentation to acquire a 2.82 acre, more or less, fee simple interest; 0.89 acre, more or less, fee simple interest; and a 0.076 acre, more or less, temporary easement from Wendy's International Inc. for the sum of Eight Hundred Twelve Thousand Three Hundred Twenty-Seven Dollars (\$812,327), said property interest located within Franklin County Parcel No. 273-008805, and more fully described and depicted in the attached Exhibit "A."

Section 2. There be appropriated from the unappropriated funds in the Bridge Street TIF Fund the amount of \$825,000 to Account No. 457-03-14-780-2510. The funds needed will be advanced from the General Fund to the Bridge Street TIF Fund and will be repaid from future revenues generated from the Bridge Street District development.

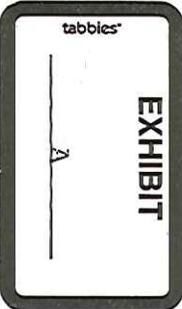
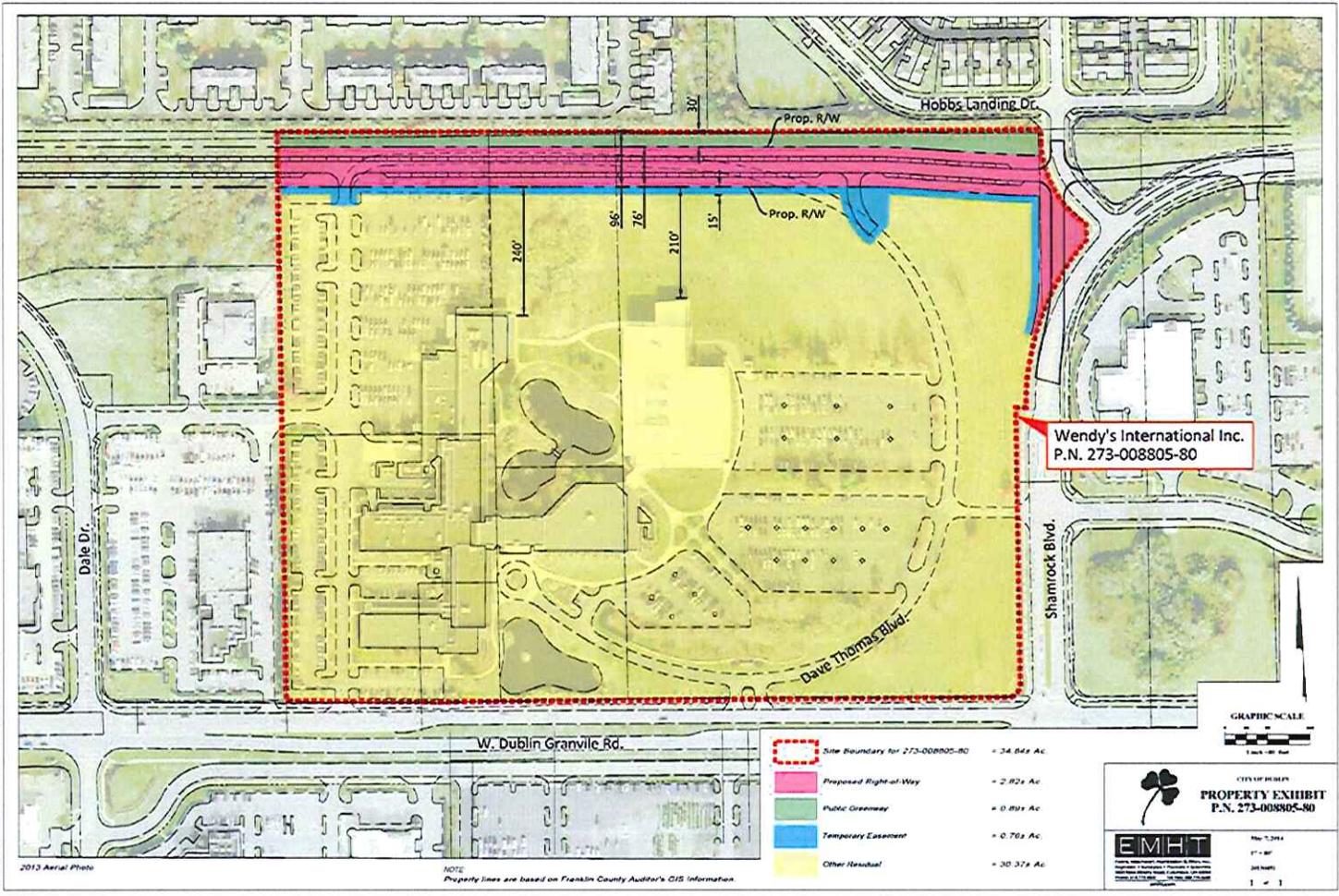
Section 3. This Ordinance is declared to be an emergency necessary for the immediate preservation of the public peace, health, safety or welfare, and for the further reason that obtaining the property interest is necessary for the advancement of this Project. The ordinance shall therefore take effect immediately upon passage.

Passed this _____ day of _____, 2014.

Mayor – Presiding Officer

ATTEST:

Clerk of Council



CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY

This Contract For Sale and Purchase of Real Property (this "Agreement") is by and between the CITY OF DUBLIN, Ohio, an Ohio municipal corporation (hereinafter referred to as the "Purchaser"), having an office at 5200 Emerald Parkway, Dublin, Ohio 43017-1006, and WENDY'S INTERNATIONAL, LLC, an Ohio limited liability company (successor in interest to Wendy's International, Inc. by conversion) with offices located at 4288 W. Dublin-Granville Road, Dublin, Ohio 43017-2093 (hereinafter referred to as the "Seller"). Purchaser and Seller are referred to individually herein as "Party" and collectively as "Parties."

Recitals

WHEREAS, Purchaser is constructing a new roadway to the north of Seller's headquarters, which necessitates the acquisition of certain property interests from Seller to be held by Purchaser in fee simple and temporary easement (the "Property"), the Property's estimated acreage is described and depicted in Exhibit A; and

WHEREAS, Purchaser agrees to purchase the fee simple and temporary easements to construct the new roadway and Seller agrees to sell the same property interest to Purchaser pursuant to the terms set forth in this Agreement on or before December 28, 2014.

NOW, THEREFORE, in consideration of the mutual promises, agreements, and covenants herein contained, the Parties agree as follows:

Provisions

1. Price and Consideration

Purchaser shall pay to Seller the sum of Eight Hundred Twelve Thousand Three Hundred Twenty Seven Dollars (\$812,327), which sum shall constitute the entire amount of compensation due to Seller for: (a) the Property interests or similar interest as described and depicted in Exhibit A; (b) any and all damages to any residual lands of Seller; and (c) Seller's covenants set forth herein. The Purchase Price shall be payable at Closing (as defined below) by irrevocable bank wire of federal funds or other form of payment that is available for immediate credit in Columbus, Ohio.

2. Surveys; Deed to Transfer

The Parties acknowledge the Property as described and depicted in Exhibit A constitute a good faith best estimate of the Property needed by Purchaser. Prior to closing, legal descriptions and surveys will be prepared by Purchaser, at Purchaser's sole cost and expense, and provided to Seller outlining the exact acreage; Any minor deviation (i.e. and increase or decrease in excess of five (5%) percent) in acreage from Exhibit A shall not affect any of the terms herein.

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the Property as surveyed by the Purchaser subject to the terms herein. One of the rights and titles constitutes a fee simple interest in, to and of the real property. Such sale and conveyance by Seller shall be by a good and sufficient

general warranty deed. In the event the rights, titles, and estates constitute something less than the fee simple of the real property, then such sale and conveyance by Sellers shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates.

3. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles, and interests described and depicted in Exhibit A.

4. Warranty of Title

Seller hereby warrants that it is the true and lawful owner of the property identified in Exhibit A, and is lawfully seized of the same in fee simple, and has the full and complete authority to grant the easements as set forth in this Agreement.

5. Elimination of Others' Interests

Seller shall reasonably cooperate with Purchaser in its efforts to procure all releases and cancellations of any and all other rights, titles, and interests in the property described and depicted in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees, or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgagee of Seller or if a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the Property described in Exhibit A and depicted in Exhibit B, then and in that event this Agreement shall become null and void and the Parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term "fails to cooperate" shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee's mortgage lien that Purchaser, in its reasonable discretion, deems to be excessive.

6. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy, or change any improvement located on the property described in Exhibit A. If, prior to Closing, the Seller performs any work which results in a material change or alteration to the subject property then, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such change or alteration, may terminate and cancel this Agreement upon written notice to Sellers. If, prior to Closing, the subject property or any material portion thereof is destroyed or damaged, Seller shall promptly notify Purchaser and either party shall have the right to terminate this Agreement upon written notice to the other within ten (10) business days following such notice.

7. Access Prior to Closing.

This section shall constitute appropriate notice from Purchaser under Ohio Revised Code Section 163.03 allowing Purchaser the right of entry on the Property for the purpose of making surveys, soundings, drillings, appraisals, and examinations as are necessary or proper for the purpose of the Purchaser accessing whether the Property is suitable for the public purpose intended. Any dispute occurring as a result of the Purchasers entry upon the Property herein shall be governed by Ohio Revised Code Section 163.03 and Chapter 163 of the Ohio Revised Code.

Purchaser agrees that, until Purchaser begins construction on the Property, which includes but is not limited to utility relocation, Seller, its employees, agents, and invitees may continue to utilize the service road located thereon for purposes of accessing the Wendy's parking lots connected by such service road. Purchaser hereby agrees to provide reasonable advance written notice (which may be given via email) to Seller of Purchaser's planned date for commencement of construction on the Property.

8. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than December 28, 2014, unless otherwise agreed to by the Parties in writing. Purchaser shall pay all closing and recording costs (other than Seller's attorney fees) associated with the Closing.

9. Condition Precedent

Purchaser shall not be obligated to close under this Agreement until it receives the approval of the Dublin City Council for all obligations under this Agreement.

10. Binding Agreement

Any and all of the terms, conditions, and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors, and assigns.

11. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

12. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either expressed or implied, other than herein set forth, shall be binding upon either Seller or Purchaser.

13. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

14. Governing Law

This Agreement shall be governed by the laws of the State of Ohio, and the venue for any claim relating to said Agreement shall be an applicable Court in Franklin County, Ohio.

{Signatures and Acknowledgements continue on next pages}

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) indicated immediately below their respective signatures.

PURCHASER

THE CITY OF DUBLIN, OHIO

Marsha I. Grigsby, City Manager

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

BE IT REMEMBER, that on this ____ day of _____, 2014, before me, the subscriber, a Notary Public in and for said county and state, personally came Marsha I. Grigsby, City Manager of the CITY OF DUBLIN, OHIO, an Ohio municipal corporation, who acknowledged the signing thereof to be her free act and deed for and on behalf of the municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public

Approval as to form:

Law Director

{Signatures and Acknowledgements continue on next page}

SELLER:

Wendy's International, LLC.

By: _____

Its: _____

By: _____

Its: _____

Legal approved: _____

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

BE IT REMEMBER, that on this ____ day of _____, 2014, before me, the subscriber, a Notary Public in and for said county and state, personally came _____ and _____, the _____ and _____, respectively, of WENDY'S INTERNATIONAL, LLC, an Ohio limited liability company, who acknowledged the signing thereof to be his/her free act and deed for and on behalf of WENDY'S INTERNATIONAL, LLC.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public

Notary Public