



City of Dublin

**Office of the City Manager**

5200 Emerald Parkway • Dublin, OH 43017-1090  
Phone: 614-410-4400 • Fax: 614-410-4490

# Memo

**To:** Members of Dublin City Council  
**From:** Marsha I. Grigsby, City Manager   
**Date:** January 22, 2015  
**Initiated By:** Michelle Crandall, Assistant City Manager  
Jennifer D. Readler, Assistant Law Director  
**Re:** Ordinance 06-15 - Agreement to Acquire Kaltenbach Park

## Summary

The City of Dublin ("City") and Washington Township (the "Township") have a long history of working together for the common goal of acquiring property and developing public parkland. Both parties desire to continue this partnership to further their joint interest. To that end, the Township has agreed to transfer approximately 11.856 acres of parkland from the Township to the City; this property is known as Kaltenbach Park (the "Park").

The Ordinance would authorize the City Manager to execute the real estate purchase agreement to "purchase" the Park property. The Township agreed to transfer the property to the City at no cost in exchange for the City's obligation to assume maintenance of the Park. The Township will convey title and possession of the Park property to the City by a quit claim deed to be recorded by March 11, 2015.

The Park consists of two parcels, identified as Franklin County Parcel Numbers 274-000114 and 273-005599, located at 5985 Cara Road, which is just east of the intersection of Rings Road and Avery Road (see attached aerial). There are facilities on the Park property that offer various amenities, activities, and opportunities for programming.

City staff has met with Township staff to ensure a seamless transition of the property for current facility users. Various types of programming are being considered, including use as a camp site and as additional classroom space for a variety of fitness and education programs.

## Recommendation

Staff recommends approval of Ordinance No. 06-15 so that the City Manager may execute the necessary documents to transfer the Kaltenbach Park property from the Township to the City.

RECORD OF ORDINANCES

Ordinance No. 06-15 Passed \_\_\_\_\_, 20\_\_\_\_

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT TO ACQUIRE APPROXIMATELY 11.856 ACRES OF PROPERTY (KNOWN AS KALTENBACH PARK) FROM WASHINGTON TOWNSHIP.**

**WHEREAS**, Washington Township (the "Township") owns two certain tracts of real property identified as Franklin County Parcel Numbers 274-000114 and 273-005599 and those improvements constructed upon such real property, which are located in the Township of Washington, County of Franklin, State of Ohio, and which are generally shown on Exhibit "A" attached hereto (the "Premises"); and

**WHEREAS**, the Premises is currently used by the Township as a park known as Kaltenbach Park; and

**WHEREAS**, the Township desires to transfer and convey title to the Premises to the City of Dublin, and the City desires to accept such transfer and conveyance.

**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 a real estate purchase agreement and all necessary conveyance documentation to acquire approximately 11.856 acres of property (known as Kaltenbach Park) from Washington Township.

**Section 2.** This Ordinance shall take effect and be in force from and after the earliest date permitted by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Mayor – Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of Council

Kaltenbach Park - 5985 Cara Road  
(Parcel Numbers 274-000114 and 273-005599)



## **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

This **AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY** (the "Agreement") is made by and between the **Township of Washington**, an Ohio township, having an office and place of business located at 6200 Eiterman Road, Dublin, Ohio 43016 ("Seller"), and the **City of Dublin, Ohio**, an Ohio municipal organization, having an office and place of business located at 5200 Emerald Parkway, Dublin, Ohio 43017("Buyer").

### **Background Information**

- A. Seller is the owner of two certain tracts of real property (Parcel No. 274-000114, 5.032 acres and Parcel No. 273-005599, 6.824 acres) and those improvements constructed upon such real property which is located in the Township of Washington, County of Franklin, State of Ohio, and which is generally shown on **Exhibit A** attached hereto (the "Premises").
- B. The Premises is currently used as a park by Seller.
- C. R.C. 505.10(A)(5) allows a township, which has title to real property, to transfer and convey, when authorized by resolution, the property to any other political subdivision upon such terms as are agreed to between the Board and the legislative authority of that political subdivision.
- D. R.C. 505.101 allows a township, when authorized by resolution, to enter into a contract without advertising or bidding, for the sale of equipment to any other political subdivision.
- E. With Resolutions \_\_\_\_\_ and \_\_\_\_\_, adopted \_\_\_\_\_, Seller authorized the transfer and conveyance of the premises as well as the improvements and equipment contained thereon to Buyer.

### **Statement of Agreement**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

## **ARTICLE I. SALE AND PURCHASE OF PREMISES**

### **§1.01 Incorporation of Background Information.**

The Background Information portion of this Agreement is hereby incorporated by this reference to the same extent and as fully as though it were here rewritten in its entirety.

§1.02 **Sale and Purchase of Premises.**

Pursuant to the terms and conditions set forth herein, Seller agrees to sell and Buyer agrees to purchase all of Seller's right, title, and interest in and to or in any way pertaining to the Premises.

**ARTICLE II. PURCHASE PRICE**

§2.01 **Amount of Purchase Price.**

The purchase price for the Premises shall be No Dollars (the "Purchase Price") and Buyer's obligation to assume the maintenance of the Premises.

§2.02 **Payment of Purchase Price.**

The Purchase Price shall be payable to Seller at Closing by cash, cashier's check, wire transfer of funds, or other form of immediately available United States funds, and shall be subject to such prorations, credits, allowances, or other adjustments as specifically provided for herein.

**ARTICLE III. TITLE INSURANCE**

§3.01 To the extent that Buyer elects to obtain title insurance for the Premises, Buyer shall do so at Buyer's sole cost and expense and at no cost to Seller.

**ARTICLE IV. DEED**

§4.01 **Deed.**

Seller shall convey title to the Premises to Buyer by a quit claim deed.

Buyer will pay all the cost and expense of any transfer taxes, conveyance fees, and/or recording fee if any, for the sale of the Premises to Buyer.

**ARTICLE V. POSSESSION AND INSPECTION**

§5.01 **Possession at Recording.**

As soon as the quit claim deed identified in Section 4.01 is recorded, Seller shall deliver to Buyer full and exclusive possession of the Premises.

**§5.02 Inspection of the Premises.**

For a period of ten (10) days from the Effective Date, Seller agrees that Buyer or its representatives, agents, or contractors may enter upon the Premises at reasonable times for the purpose of making any tests, audits, investigations, and/or surveys desired or required by Buyer. This privilege shall include the right to make surveys, soil tests, borings, percolation tests, and other tests to obtain any relevant information necessary to determine subsurface, topographic and drainage conditions and the suitability of the Premises for development and use for Buyer's intended use. In the event Buyer elects to enter upon the Premises or otherwise authorizes an agent or employee of Buyer to enter upon the Premises for the purpose of making any tests, audits, investigations and/or surveys as described above, Buyer shall restore the Premises to substantially the condition the Premises was in prior to such entry, and Buyer shall indemnify and hold Seller harmless from any cost, liability, damages, claims or the like which may arise as a result of the same including reasonable attorney fees and other costs of defense associated therewith. Such obligation of indemnification shall survive the termination of this Agreement and is herein sometimes referred to as an indemnification obligation. Further, Buyer shall assure that any agent or employee of Buyer that enters upon the Premises has a commercial general liability insurance policy in place in a sum of not less than One Million Dollars (\$1,000,000.00) with a company of recognized responsibility naming Seller as an additional insured thereunder.

Buyer shall at all times use commercially reasonable efforts to assure that any agent, employee, representative, or contractor of Buyer that enters upon the Premises shall do so in such a manner so as not to disturb the adjoining or neighboring properties, including any tenants or occupants thereof.

**ARTICLE VI. CLOSING AND BUYER'S ACKNOWLEDGMENT**

**§6.01 Recording Date.**

The purchase and sale of the Premises as well as the recording of the quit claim deed described in Section 4.01 shall occur on or before March 11, 2015 (the "Recording Date"), which Recording Date may be extended only by mutual agreement of the parties.

§6.02 **Buyer's Acknowledgment.**

**BUYER ACKNOWLEDGES THAT BUYER IS PURCHASING THE PREMISES IN AN "AS IS - WHERE IS" CONDITION AND WITHOUT ANY WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR THE LIKE. BUYER SPECIFICALLY ACKNOWLEDGES THAT, EXCEPT AS SET FORTH HEREIN, SELLER HAS MADE NO REPRESENTATIONS OR WARRANTIES RELATIVE TO THE PREMISES WHATSOEVER.**

**ARTICLE VII. TAXES, ASSESSMENTS AND UTILITY CHARGE**

§7.01 **Taxes, Assessments and Utility Charges.**

Seller and Buyer acknowledge that Seller does not pay real estate taxes for the Premises. To the extent that Seller is obligated to remit payment of utilities; Seller shall do so up to the date of Closing.

**ARTICLE VIII. INTENTIONALLY DELETED**

**ARTICLE IX. INTENTIONALLY DELETED**

**ARTICLE X. BROKERS**

§10.01 **Brokerage Fees.**

Buyer and Seller hereby represent and warrant to the other that each has not engaged or dealt with any broker or agent in regard to this Agreement or to the sale and purchase of the Premises contemplated hereby.

**ARTICLE XI. NOTICES**

§11.01 **Notices.**

Except as otherwise provided for oral or telephone communications in this Agreement, any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by one of the following methods to such party or non-party at the addresses set forth at the end of this section: (1) it may be sent by registered or certified United

States mail, return receipt requested and postage prepaid, (2) it may be delivered in person or by courier, (3) overnight delivery with a company of recognized responsibility, or (4) by telefacsimile, provided the same is followed by delivery pursuant to items (1) through (3) above. Any such notice shall be deemed to have been given as follows: (i) when so mailed, as of the calendar day on which it was mailed, and (ii) when delivered by any other means, upon receipt. Any party or non-party may change its address for notice by giving written notice thereof to the others. The addresses of Buyer and Seller for notice initially shall be as follows:

If to Seller: Washington Township  
6200 Eiterman Road  
Dublin, Ohio 43016

With a copy to: Brian M. Zets, Esq.  
Kerry T. Boyle, Esq.  
Isaac Wiles Burkholder & Teetor, LLC  
Two Miranova Place, Suite 700  
Columbus, Ohio 43215

If to Buyer: The City of Dublin, Ohio  
5200 Emerald Parkway  
Dublin, Ohio 43017

With a copy to: Stephen J. Smith, Esq.  
Jennifer D. Readler, Esq.  
Frost Brown Todd, LLC  
One Columbus – Suite 2300  
Columbus, Ohio 43215

The respective attorney of each party may give notices on behalf of that party under this Agreement with the same effect as though such notices were given by the respective party.

## **ARTICLE XII. DAMAGE AND DESTRUCTION**

§11.01 In the event the Premises is damaged or destroyed by fire or other casualty prior to Closing, Buyer may either (i) by written notice given to Seller within five (5) days after receipt of the notice from Seller of such damage or destruction, elect to either terminate this Agreement; or (ii) proceed to Closing and receive an assignment of any and all insurance proceeds applicable to such damage and destruction. In the event the amount of casualty insurance proceeds applicable to such damage is not known as of the Closing, Seller shall execute such documents at closing, including proofs of loss an

assignment of claims as is necessary to assure Buyer that it will receive all of Seller's right, title, and interest in and to such insurance proceeds.

## **ARTICLE XII. MAINTENANCE, UPKEEP, AND PROGRAMMING**

- §12.01 Once transfer of the Property is complete and properly recorded with the Franklin County Recorder's Office, the Buyer shall be solely responsible, at its own cost, for the continued maintenance and upkeep of the Property.
- §12.02 Once transfer of the Property is complete and properly recorded with the Franklin County Recorder's Office, the City shall make the Property, and all facilities located thereon, available to the Township at no cost so that the Township may continue to provide all Township-administered park programs and activities currently held on the Property until March 31, 2015, at no cost to the Township or its residents.

## **ARTICLE XIII. NO CHANGE IN CHARACTER AND USE OF THE PROPERTY**

- §13.01 Beginning January 1, 2015 and for the next ten (10) consecutive years thereafter, the City shall keep, use, and maintain the Property as a public park.

## **ARTICLE XIV. GENERAL PROVISIONS**

§14.01 **Governing Law.**

This instrument shall be governed by and construed in accordance with the laws of the State of Ohio.

§14.02 **Entire Agreement.**

This instrument embodies the entire agreement between Seller and Buyer, and there are no promises, representations, understandings, or agreements between the parties which are not set forth herein.

§14.03 **Survival.**

The indemnification obligations contained in this Agreement shall survive Closing. Furthermore, if this Agreement is terminated in accordance with any of the terms and conditions set forth herein, Seller and Buyer shall continue to be responsible for any costs and expenses which are Seller's or Buyer's responsibility for payment under this Agreement.

§14.04 **Benefit.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

§14.05 **Time of the Essence.**

Whenever a time limit or a period is stated herein, the parties agree that the time period so specified shall be deemed of the essence. Whenever it is provided in this Agreement that days shall be counted, the first date to be counted shall be the day following the date on which the event causing the period to commence occurs. If the day for performance of any action hereunder falls on a Saturday, Sunday or legal holiday in the State of Ohio, then the time for performance shall be deemed extended to the next succeeding business day.

§14.06 **Miscellaneous.**

The captions at the beginning of the several sections or paragraphs of this Agreement are not part of the context hereof, but have been inserted only to assist in locating and reading those sections or paragraphs and shall be ignored in construing this Agreement.

Whenever used in this Agreement, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

This Agreement may be executed in several counterparts, any one of which shall be deemed the original.

All Exhibits identified in and attached to this Agreement or to be attached to this Agreement as provided herein, are and shall be deemed incorporated herein by reference

**ARTICLE XV. EFFECTIVE DATE**

§15.01 **Effective Date.**

The Effective Date of this Agreement shall be the later of the date of execution of this Agreement by either Seller or Buyer.

{Signatures appear on next page}

**Seller:**

**The Township of Washington, Ohio**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date Executed:\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date Executed:\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date Executed:\_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Brian M. Zets  
Township Legal Counsel

**Buyer:**

**The City of Dublin, Ohio**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date Executed:\_\_\_\_\_

\_\_\_\_\_  
Jennifer D. Readler  
Assistant City Law Director

## **EXHIBIT "A"**

[Upon completion, Exhibit "A" will contain a description of the Premises]

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