

**ORDINANCE NO. 20-105**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR THE PURCHASE OF REAL PROPERTY LOCATED NORTH OF WEST ADAMS STREET BETWEEN PUTNAM STREET AND HARRISON STREET, SANDUSKY, AND IDENTIFIED AS PARCEL NO. 59-01355.000; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, as part of the requirements set in the NPDES permit that resulted from negotiations with the Ohio Environmental Protection Agency (EPA) regarding updates to the Combined Sewer Overflow (CSO) General Plan, the City agreed to proceed with five (5) construction projects and perform an evaluation of potential green infrastructure (GI) opportunities of which two (2) projects (East End Sewer Improvements and Grit Tank Expansion) and the green infrastructure evaluation are complete, two (2) projects (Farwell & Pier Track Pump Station Upgrades) will be completed this year, and the final project (Mills Street High Rate Treatment (HRT)) is required to be completed no later than December 1, 2024; and

**WHEREAS**, the Mills Street HRT Project involves installation of a large, 16 MGD holding tank at the Wastewater Treatment Plant (WWTP) on Harrison Street, which will require a large aerial footprint, and with limited available property around the WWTP, Staff feels it is important to evaluate surrounding property and develop a site plan; and

**WHEREAS**, acquiring this property would allow for the flexibility of locating a consolidated public park near the Sandusky Bay Pathway and the Shelby Street Boat Ramp with views of the waterfront, and locating the storage tank on the east side of Harrison Street and Staff feels that acquisition of this parcel is essential to a successful plan and for a successful project; and

**WHEREAS**, the purchase price for the property is \$190,000.00 plus closing costs associated with the acquisition and these costs will be paid with Sewer Funds; and

**WHEREAS**, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to acquire the property in a timely manner and allow the City to begin the planning process for the aforementioned projects and plans; and

**WHEREAS**, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

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Section 1. The City Manager is hereby authorized and directed to execute a Purchase Agreement on behalf of the City with American Veterans of WW II, for the sale and purchase of real property, identified as Parcel No. 59-01355.000, located north of West Adams Street between Putnam Street and Harrison Street in Sandusky, substantially in the same form as contained in Exhibit "1", which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. The City Manager and/or Finance Director are authorized and directed to expend funds for the purchase of the property identified as Parcel No. 59-01355.000, located north of West Adams Street between Putnam Street and Harrison Street in Sandusky, in the amount of One Hundred Ninety Thousand and 00/100 Dollars (\$190,000.00) plus closing costs.

Section 3. The City Manager, Finance Director, and Law Director are authorized and directed to take such other actions and measures as are incident to and reasonably necessary to effect the purchase of Parcel No. 59-01355.000, located north of West Adams Street between Putnam Street and Harrison Street in Sandusky.

Section 4. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 5. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 6. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its

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adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION



ATTEST: KELLY L. KRESSER  
CLERK OF THE CITY COMMISSION

Passed: July 27, 2020

## PURCHASE AGREEMENT

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**THIS AGREEMENT** ("Agreement" or "Purchase Agreement") is entered this \_\_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date") by and between City of Sandusky or its assignee, ("Purchaser") and American Veterans of WW II, ("Seller").

1. **Property.** Including all property designated as Harrison Street vacant land and located in the City of Sandusky, County of Erie and State of Ohio, including all land, buildings (if any), improvements and fixtures (the "Property"), and being all or part of Erie County Parcel 59-01355.000, with a total acreage of approximately 3.019 acres.

2. **Purchase Price.** The Purchase Price for the Property shall be One Hundred, Ninety Thousand Dollars (\$190,000.00) payable as follows:

- a. \$20,000.00 earnest money deposit paid to the escrow agent upon acceptance of this agreement.
- b. \$170,000.00 CASH at closing.

3. **Earnest Money.** The earnest money deposit shall be applied to the Purchase Price at Closing. In the event this transaction does not close for any reason, other than default by Purchaser, or in the event all conditions precedent are not fully satisfied or waived, the earnest money deposit shall be returned in full to Purchaser. However, upon waiver of all contingencies at the expiration of the Due Diligence Period, and so long as there is no default by Seller, the earnest money shall become non-refundable.

4. **Title Provider.** The title evidence and escrow shall be provided by Southern Title of Ohio in Sandusky, Ohio. Title shall be transferred to Purchaser or its assignee, by General Warranty or appropriate Deed acceptable to both parties.

5. **Title.** An Owner's Fee Policy of Title Insurance in the amount of the Purchase Price shall be issued showing Seller or insuring Purchaser, good and merchantable title in fee simple, free and clear of all liens and encumbrances except those specifically set forth in this Agreement.

6. **Conveyance.** Seller shall deliver to Purchaser a Limited Warranty or appropriate Deed conveying good and marketable title in the Property to Purchaser free and clear of all liens and encumbrances whatsoever except a) any mortgages, liens or encumbrances created by or assumed by Purchaser, b) reservations, easements, conditions and restrictions of record, c) zoning ordinances, d) legal highways, and e) taxes and assessments, both general and specific, for the current half of the taxable year and thereafter, not yet due and payable.

7. **Taxes, Assessments and Pro-rations.** Purchaser shall receive a real estate tax proration equal to the calculated tax rate for the parcel based on the current tax valuation (i.e. current tax valuation x commercial tax rate for specific tax district of the parcel x the percentage of the tax year completed). There will be no post-closing adjustment to the proration and the Purchaser shall be responsible for any shortage to the actual bill.

8. **Closing.** This contract shall be closed, and all obligations of the parties shall be performed on or before 5:00 pm EST August 21st, 2020, or within 15 calendar days of Purchaser's satisfaction and acceptance of the Due Diligence Period as set forth in writing by Purchaser, whichever may first occur. Closing may be extended upon the mutual written consent of both parties

9. **Charges Paid through Escrow.**

- a. Including any other charges or fees set forth in this Agreement, Purchaser shall pay the following:
  - i. The cost of preparation and recording any mortgage placed on the Property by Purchaser and all costs and fees incidental thereto;
  - ii. The cost of recording the deed, any mortgage and all costs and fees incidental thereto;
  - iii. ½ the cost of insuring premiums of the Owner's Fee Policy of Title Insurance;
  - iv. ½ the cost of the escrow/closing fee;
- b. Including any other charges or fees set forth in this Agreement, Seller shall pay for:
  - i. Any amount required to discharge any mortgage of record, lien or encumbrance not permitted by this Agreement;
  - ii. Taxes and assessments due and payable on the date of transfer;
  - iii. After taxes and assessments have been prorated to the date of transfer, the amount of prorated taxes and assessments which are a lien, but not yet due and payable;
  - iv. Any real estate transfer fee or conveyance;
  - v. ½ the cost of insuring premiums of the Owner's Fee Policy of Title Insurance;
  - vi. ½ the cost of the escrow/closing fee;
  - vii. Proration of existing or proposed tenant leases;
  - viii. The commission to Broker(s) as per separate agreement;

10. **Conditions Precedent to Closing.**

- a. The following shall be conditions precedent to the Closing:
  - i. Seller shall order a Preliminary Title Commitment, which shall include copies of all easements and restrictions of record, and the amount and

terms of any special assessments and shall provide the Commitment to Purchaser within three (3) days of receipt.

- ii. All currently issued governmental authorizations must remain in full force and effect as of the date of Closing.
- iii. Seller agrees, to the best of its knowledge, that all representations and warranties made by the Seller shall be true and correct when made and as of the date of Closing.

11. **Seller representations and warranties.**

- a. To the best of its knowledge after reasonable inquiry, Seller represents and warrants the following:
  - i. Purchaser shall receive free and clear title to the Property by Limited Warranty (or appropriate) from the Seller and that existing mortgages, not assumed or assigned to Purchaser, on the Property will be satisfied no later than the date of Closing. In the event Seller is unable to convey such title to the Property, then Purchaser may terminate the Agreement and all monies paid or deposited by Purchaser shall be returned and all obligations under the Agreement shall terminate.
  - ii. All information delivered to Purchaser, including but not limited to leases, reports, contracts, agreements, prior appraisals, surveys, the absence of pending or threatened litigation and full disclosure of all other relevant information regarding the property provided is true and accurate.
  - iii. The persons or entities signing this Agreement and all Closing documents, including the Deed, have due authority to deliver title to the Property.
  - iv. The Seller shall continue compliance with all applicable zoning and use laws, rules and regulations.
  - v. That the Property shall be maintained substantially in its present condition until Closing.
  - vi. That Seller has no knowledge of any present or future improvements by a public authority, any part of the cost of which would or might be assessed against the Property, and Seller has no knowledge of any current or contemplated future assessments of any kind.
  - vii. That, except as to those improvements disclosed to Purchaser, no improvements have been or will be made to the Property within ninety (90) days of the date of Closing such that any person or entity is

entitled to a mechanics' lien against the Property by reason of services rendered or materials furnished, or otherwise.

viii. That the Seller has no knowledge of any pending condemnation proceedings or overtly threatened condemnation proceedings which would affect all or any part of the Property.

ix. That, to the best of Seller's knowledge, no litigation, legal proceeding or government proceedings or investigation of any kind is pending or has been overtly threatened which would adversely affect all or part of the Property or tenancies or Purchaser's title to the same, as herein contemplated, after Closing.

b. In the event Seller breaches, any of the above representations or warranties prior to Closing, Purchaser may terminate this Purchase Agreement and receive the return receipt of its earnest money deposit. In the event Seller, does not discover the breach until after this transaction has Closed, Seller may pursue other remedies at law.

c. All representations and warranties of Seller shall survive Closing.

12. **Due Diligence Period.** As a condition precedent to Purchaser's obligations under the Purchase Agreement, Purchaser shall have Thirty (30) days from final execution of the Purchase Agreement to review and/or conduct (at Purchaser's expense) and be satisfied with all those tests, surveys, examinations, environmental assessments, soil tests, mold inspections and other studies which Purchaser may desire to conduct, and to review and/or obtain any and all documentation, including but not limited to (i) plans and specifications, (ii) acceptable site plan, (iii) acceptable traffic ingress, egress and curb cuts, (iv) proof of utility availability, (v) all applicable government approvals, licenses, permits, zoning modifications and such related notices, and (vi) review and acceptance of all existing or proposed Tenant leases (separately and collectively being the "Due Diligence Period"). Should Purchaser provide notice to Seller of his intention to terminate the Purchase Agreement for any reason, within his sole discretion, prior to the expiration of the Due Diligence Period, this Purchase Agreement is hereby terminated immediately and the earnest money deposit shall be immediately returned to Purchaser. Both parties mutually agree to extend the Due Diligence Period should initial findings indicate a need for additional environmental testing or assessment.

13. **Possession.** Purchaser shall obtain possession to property at Closing.

14. **Commissioner/Board Approval:** Purchaser and Seller acknowledge and agree that each party's obligations under this Agreement shall be subject to obtaining permission or approval from the Sandusky City Commissioners as to "Buyer",

and permission or approval from an “authorized executive committee” or general membership endorsement of the American Veterans of WW II as to “Seller”.

14. **Miscellaneous.**

- a. **Time is of the essence of this contract.**
- b. Each party hereto is responsible to pay its own respective attorney’s fees, if any, incurred in this transaction.
- c. This Purchase Agreement shall be binding on the heirs, successors and assigns of the parties hereto.
- d. Any changes, modifications or amendments to this Agreement shall be in written form and shall be executed by both parties hereto.
- e. Purchaser is represented by Henry “Mac” Lehrer, CCIM of Hoty Enterprises, Inc., with Seller being represented by Jeffrey S. Berquist - Broker of Berkshire Hathaway HomeServices Stadtmiller Realty whose fees shall be paid by separate agreement. All requisite disclosures under Ohio law have been made to both Seller and Purchaser and are part of this agreement.
- f. This Purchase Agreement shall be governed by the laws of the State of Ohio and jurisdiction over any matter arising under this Agreement shall be within Erie County, Ohio.
- g. Any notice, request, demand, instruction or communication hereunder shall be in writing and shall be deemed to have been duly given (i) two (2) business days after deposit in registered or certified U.S. mail, postage fully prepaid, (ii) one (1) day after deposit with a recognized overnight delivery service such as Federal Express, or (iii) immediately upon email transmittal (provided that such email service is either replied to by the recipient or followed by service pursuant to (ii) above received by the recipient the next business day), addressed as follows:

To Seller: TBD

With copies to: TBD

To Purchaser: TBD

With copies to: TBD



The addresses for the purpose of this paragraph may be changed by giving notice as provided as provided herein.

Notice shall also be deemed to have been given upon receipt of actual knowledge by any means of the information contained in said notice.

IN WITNESS WHEREOF, each of the parties hereto has signed this Agreement on the date shown below their respective signatures.

*Agreed:*

**Purchaser:**

By:

\_\_\_\_\_

Its:

\_\_\_\_\_

Dated: \_\_\_\_\_, 2020

**Seller:**

By:

Quint Schum

Its:

Post Commander

Dated: 29 JUNE, 2020