

RESOLUTION NO. 41-24
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE 15th
DAY OF April, 2024.

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE WITH THE BOARD OF EDUCATION OF THE CENTERVILLE CITY SCHOOL DISTRICT FOR THE PURCHASE OF APPROXIMATELY SIX ACRES OF VACANT LAND PLUS OR MINUS LOCATED IN THE CITY OF CENTERVILLE.

WHEREAS, Council and the Board of Education of the Centerville City School District previously entered into an Agreement for Purchase and Sale of property dated June 9, 2022; and

WHEREAS, said Agreement was amended on or about May 19, 2023, and August 28, 2023; and

WHEREAS, said Agreement and its Amendments set forth time periods for completion of various items; and

WHEREAS, the parties desire to extend the Due Diligence Period of the Agreement to allow additional time for the parties to work on additional aspects of the purchase and adopt a cost share agreement; and

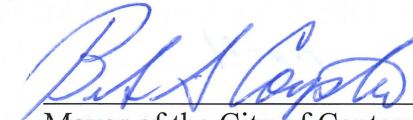
WHEREAS, Council has the power to enter into such real property purchase agreement by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1: That the City Manager is hereby authorized to execute on behalf of the City, the Third Amendment to Agreement for Purchase and Sale with the Board of Education of the Centerville City School District for the purchase of property located in the city of Centerville upon terms and conditions substantially similar to those terms set forth in the amendment. Said amendment is marked as Exhibit "A" and incorporated herein.


Section 2: That this resolution shall go into effect at the earliest time allowed by law.

PASSED THIS 15th day of April, 2024.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 41-24, passed by the Council of the City of Centerville, Ohio on the 15th day of April, 2024.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney



**THIRD AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE**

THIS THIRD AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE (this "Amendment") is by and between the **BOARD OF EDUCATION OF THE CENTERVILLE CITY SCHOOL DISTRICT**, Montgomery County, Ohio, a city school district and political subdivision of the State of Ohio ("Seller"), and the **CITY OF CENTERVILLE, OHIO**, a City and political subdivision in and of the State of Ohio ("Purchaser") pursuant to Ohio Revised Code 3313.41(C), under the circumstances summarized in the following recitals:

- A. Pursuant to an Agreement for Purchase and Sale entered into by and between Seller and Purchaser dated June 9, 2022, as amended by the (i) Notification to Seller of First Extension of Due Diligence Period dated December 6, 2022, (ii) Notification to Seller of Second Extension of Due Diligence Period dated January 5, 2023, (iii) First Amendment to Agreement for Purchase and Sale dated May 19, 2023, and (iv) Second Amendment to Agreement for Purchase and Sale dated August 28, 2023 (collectively, the "Purchase Agreement"), Seller agreed to sell, and Purchaser agreed to purchase, the Property.
- B. Pursuant to Sections 9.1 and 9.2 of the Purchase Agreement, Purchaser agreed to construct and maintain landscape buffers around the Property and construct the Public Improvements to be completed after the Closing.
- C. The parties have agreed to a cost sharing arrangement where each party will pay a portion of the costs related to the construction of the Public Improvements in accordance with the terms and conditions contained herein.
- D. The parties have further agreed to (i) update the Exhibits attached to the Purchase Agreement to depict the Real Property and the Public Improvements more accurately, (ii) clarify certain easements set forth in Section 5 of the Purchase Agreement, and (iii) otherwise amend the Purchase Agreement in accordance with the terms and conditions contained herein.

NOW, THEREFORE, for valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

1. **Recitals Incorporated/Defined Terms.** The foregoing recitals are incorporated herein by this reference as if set forth herein. Unless otherwise defined herein or unless the context clearly requires a different meaning, the capitalized and non-capitalized words and phrases defined in the Purchase Agreement which are used in this Amendment shall have the same meaning ascribed to them in the Purchase Agreement.

2. **Phases.** The construction of the Public Improvements shall be completed in two (2) phases – "Phase 1" and "Phase 2". The scope of work for each Phase is set forth in the Cost Sharing Agreement (defined in Section 3 below).

3. **Cost Sharing.** Notwithstanding anything contained in the Purchase Agreement or elsewhere to the contrary, the parties agree to share the actual costs and expenses for the construction of Phase 1 of the Public Improvements (the "Phase 1 Costs") in accordance with the terms and

conditions contained in the Cost Sharing Agreement, the form of which is hereby attached to the Purchase Agreement as Exhibit D. Further, the following is hereby added as subsection 5.5.4 of the Purchase Agreement:

5.5.4 *The parties executing a mutually agreeable cost sharing agreement (the “Cost Sharing Agreement”) in the form attached hereto as Exhibit D that sets forth the parties’ respective obligations for the payment of costs associated with the construction of the Phase 1 Public Improvements.*

The terms and conditions contained in this Section 3 shall survive the Closing and shall not merge with the Deed.

4. **Easements**. The parties also acknowledge and agree that the easements set forth in Sections 5.5.2 and 5.5.3 of the Purchase Agreement (the “Seller Easements”) have been executed by Seller and recorded in the Montgomery County Records as Instrument Numbers 2024-00012557 and 2024-00012558. The Seller Easements shall no longer be a condition to closing. Because the Seller Easements were recorded prior to the Closing, the last sentence in Section 9.4 of the Purchase Agreement is moot, and such sentence is hereby deleted in its entirety.

5. **Real Property**. Exhibit A to the Purchase Agreement is hereby deleted in its entirety. Notwithstanding anything contained in the Purchase Agreement or elsewhere to the contrary, the definition of Real Property shall include the approximately 7.393 +/- acres of unimproved land located in Centerville, Montgomery County, Ohio as more particularly described in new Exhibit A-1 to the Purchase Agreement and generally depicted in new Exhibit A-2 to the Purchase Agreement. New Exhibit A-1 and new Exhibit A-2 are attached hereto, and hereby replace the current Exhibit A to the Purchase Agreement.

6. **Updating Other Exhibits to the Purchase Agreement**. Exhibits B and C attached to the Purchase Agreement are hereby deleted in their entirety and replaced with new Exhibits B and C, attached hereto.

7. **Ratification; Severability**. Except as amended hereby, the Purchase Agreement is ratified and confirmed and remains in full force and effect. To the extent that any of the terms of the Purchase Agreement are inconsistent with the terms of this Amendment, this Amendment shall govern and control and the Purchase Agreement shall be deemed to be amended to conform to the terms of this Amendment. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Amendment, but this Amendment shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

8. **Effective Date; Counterparts**. This Amendment is effective as of the date last signed by the Purchaser or Seller. This Amendment may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally scanned signatures are acceptable to evidence complete agreement.

9. **Binding Effect**. Each of the provisions of this Amendment shall extend to and shall, as the case may require, bind, or inure to the benefit of Seller and Purchaser, and also to each of their respective legal representatives, successors, and assigns.

10. **Representation.** The parties hereby represent and warrant to each other that (a) each of them has the legal power and authority to execute and deliver this Amendment; (b) the individual(s) executing this Amendment for each party has been duly authorized to execute and deliver the same and bind such party with respect to the provisions hereof; and (c) this Amendment constitutes a valid and binding obligation upon such party in every respect.

[Remainder of this page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized representatives on the date and year set forth below their respective signatures, and hereby agree that the date of the last party to execute this Amendment shall be the effective date of this Amendment.

**SELLER:
BOARD OF EDUCATION OF THE CENTERVILLE
CITY SCHOOL DISTRICT, MONTGOMERY
COUNTY, OHIO**

By: _____
Allison Durnbaugh, President

Date: _____

By: _____
Laura Sauber, Treasurer

Date: _____

**PURCHASER:
CITY OF CENTERVILLE, OHIO, a City and political
subdivision in and of the State of Ohio**

By: _____

Print Name: _____

Date: _____

Approved as to Form:

Scott A. Liberman, Municipal Attorney

EXHIBIT A-1
DESCRIPTION OF THE REAL PROPERTY
[SEE ATTACHED]

The land herein described is situated in the City of Centerville, Montgomery County, State of Ohio, Section 24, Town 3, Range 5, M.R.s.; herein is a plat of 7.393 acres, being within a replat and part of 61.260 acres Lot No. 200 of Washington Township Fire Department Plat, as recorded in Plat Book 237, Pages 52-52A and described in I.R. Deed 17-076321 to The Board of Education for Centerville City Schools (record references to those of the Recorder's Office, Montgomery County, Ohio) and being more particularly described as follows:

Commencing at the 5/8" iron pin w/cap found at the southeast corner of the northwest quarter of Section 24 and the centerline of Clyo Road (varies right-of-way);

Thence, North 87 degrees 11 minutes 13 seconds West with the southerly line of said northwest quarter and northerly line of Quaker Estates Section Two Subdivision, as recorded in Plat Book 145, Page 35, and northerly line of Quaker Estates Section One Subdivision, as recorded in Plat Book 143, Page 26, for a distance of 715.61 feet to the 5/8" iron pin w/cap found at southeasterly property corner of 61.260 acre tract of land as described in I.R. Deed 17-076321 to The Board of Education for Centerville City Schools (record references to those of the Recorder's Office, Montgomery County, Ohio), and the being True Point of Beginning for this description;

Thence, North 87 degrees 10 minutes 11 seconds West with southerly property line of said 61.260 acre tract of land, with northerly line of Quaker Estates Section One Subdivision, as recorded in Plat Book 143, Page 26, and northerly line of Centerville Acres No. I Section 4, as recorded in Plat Book "MM", Page 77, for a distance of 428.15 feet to a 1/2" iron pin w/cap set at intersection of southerly property line of The Board of Education for Centerville City Schools and new division line of Lot 3;

Thence, North 05 degrees 08 minutes 44 seconds East, leaving southerly property line of said 61.260 acre tract of land, with new division line of Lot 3 and parallel with easterly property line of 61.260 acre tract of land, for a distance of 610.86 feet to a set 1/2" iron pin w/cap;

Thence, South 87 degrees 11 minutes 10 seconds East, continuing with new division line of Lot 3, for a distance of 318.07 feet to the 5/8" set iron pin w/cap;

Thence, North 05 degrees 08 minutes 44 seconds East, continuing with new division line of Lot 3, for a distance of 551.52 feet to a set 5/8" iron pin w/cap;

Thence, South 87 degrees 18 minutes 04 seconds East, with line of proposed permanent right of way of Dimeo Way and with new division line of Lot 3, for a distance of 110.09 feet to a set 5/8" iron pin w/cap;

Thence, South 05 degrees 08 minutes 44 seconds West, with easterly property line of 61.260 acre tract of land, for a distance of 1162.72 feet (passing iron pins found at 486.69 feet and 931.95 feet) to the 5/8" iron pin w/cap found at southeasterly property corner of 61.260 acre tract of land as described in I.R. Deed 17-076321 to The Board of Education for Centerville City Schools (record references to those of the Recorder's Office, Montgomery County, Ohio) and the True Point of Beginning,

containing a total of 7.393 acres of land, more or less, and is located in Montgomery County Auditors Parcel Number 068-00304-0077.

The Board of Education for Centerville City Schools claims title by the I.R. Deed 17- 076321 in Montgomery County Recorder's Office. Subject to all legal highways and easements.

The Bearings herein are based on GPS observations using the Ohio CORS Network (Ohio South Zone) to determine a grid bearing in the NAVD 1983 (CORS) system.

This description was reviewed and prepared on February 20, 2024, by Valarry Goldfeder, Registered Surveyor No. 8171 of the State of Ohio.

This description is based on a survey made by the TEC Engineering, Inc., under the direction and supervision of Valarry Goldfeder, Registered Surveyor No. 8171, in November 2022.

EXHIBIT B
FORM OF DEED
[SEE ATTACHED]

EXHIBIT C THE PUBLIC IMPROVEMENTS

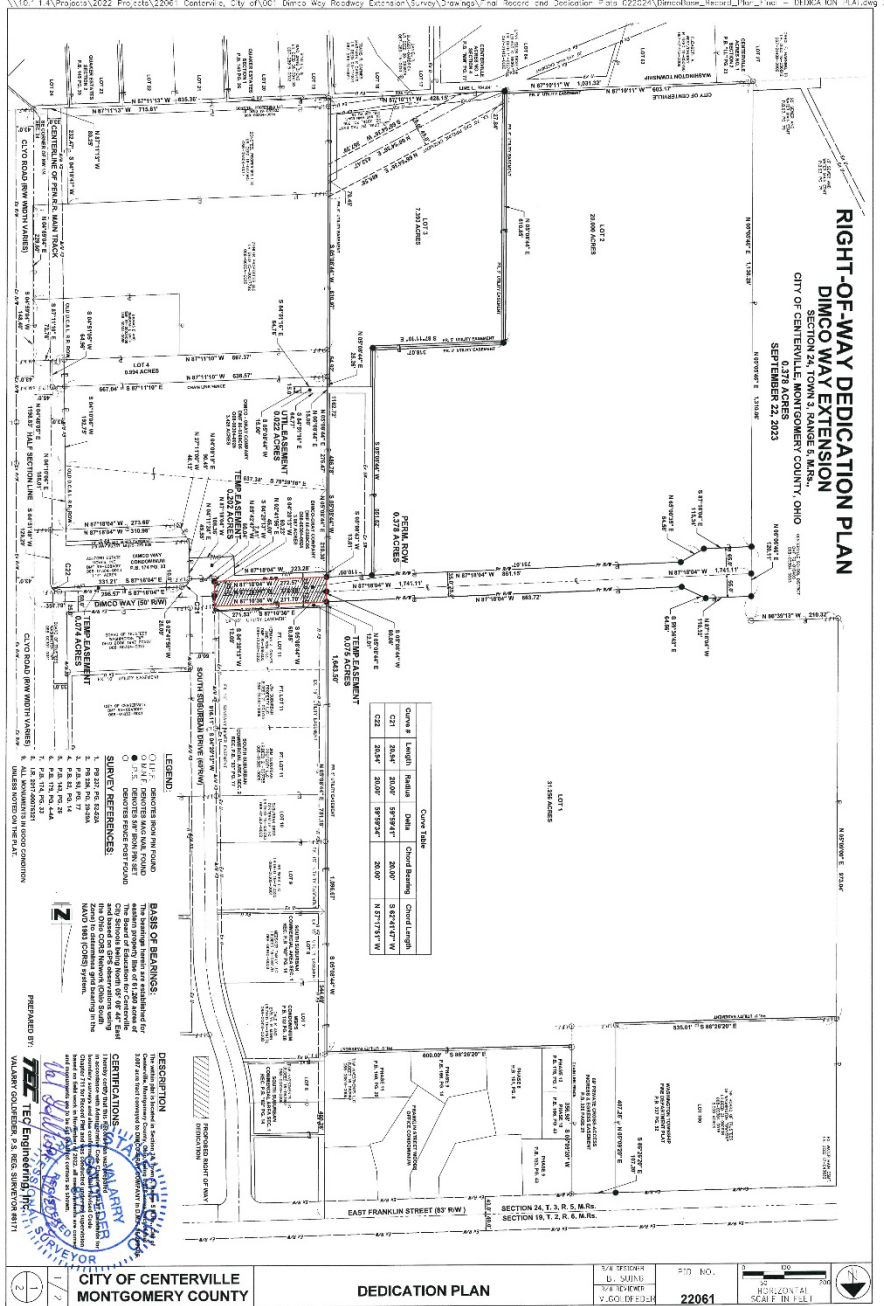


EXHIBIT D
COST SHARING AGREEMENT
[SEE ATTACHED]