

RESOLUTION NO.: 75-2023

INTRODUCED BY: Mayor Thomas and All of Council

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF RICHMOND HEIGHTS, A PURCHASE AGREEMENT WITH THE RICHMOND HEIGHTS LOCAL SCHOOL DISTRICT BOARD OF EDUCATION TO ACQUIRE A STRIP OF LAND FOR THE WIDENING OF RICHMOND ROAD FOR A PUBLIC SIDEWALK AND ASSOCIATED EASEMENTS.

WHEREAS, in order to eliminate a pedestrian bridge used by the public that is located on the real property owned by the Richmond Heights Local School District and that is in severe disrepair and unsafe for travel, the City of Richmond Heights has agreed to eliminate the bridge by constructing a public sidewalk over a new stream culvert for pedestrian travel (the "Project") by way of the School District transferring fee title ownership of a strip of land 13 feet x 125 feet to the City to widen the public right of way known as Richmond Road and to grant a temporary easement to the City to complete the construction work and to grant a permanent easement to the City for inspecting, maintaining, restoring and repairing and a storm water stream conveyance system, if needed;

WHEREAS, the Richmond Heights Local School District Board of Education authorized a "Purchase Agreement" with the City to accomplish the foregoing real property transactions, which Purchase Agreement is attached hereto and incorporated by reference into this Resolution as "Exhibit A";

WHEREAS, the funds required for this Project are from a grant of federal American Rescue Plan Act of 2021 ("ARPA") funds awarded to the City by the County of Cuyahoga for this Project;

WHEREAS, there is a need for expedited approval of this Resolution in order to consummate the transactions set forth in the Purchase Agreement, to competitively bid the construction project, and to complete the Project before the start of the 20233-2024 school year;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Richmond Heights, Ohio, that:

Section 1: The Mayor is authorized, on behalf of the City of Richmond Heights, to execute the "Purchase Agreement", as attached hereto as "Exhibit A", and to perform such other acts as necessary to accept the real property interests set forth therein, with the costs of said Project to come from the City's "Fund 224-Cuyahoga County/APRA Fund".

Section 2: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This action of the Council constitutes administrative action, rather than legislative action, and, therefore, this Resolution shall take effect and be in force from and after its passage by Council and approval by the Mayor.

PASSED: May 23, 2023

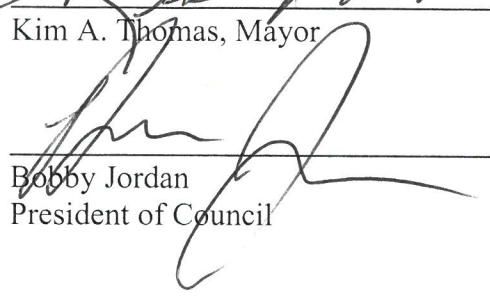
APPROVED: May 23, 2023



Kim A. Thomas, Mayor

ATTEST: Donnie Hunter

Donnie L. Hunter
Clerk of Council



Bobby Jordan
President of Council

"EXHIBIT A"

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "**Agreement**") is made by and between the **Richmond Heights Local School District Board of Education**, a duly organized school district in Ohio, (the "**Seller**") and the **City of Richmond Heights**, a duly organized municipal corporation in Ohio, (the "**Buyer**"). The Effective Date of this Agreement shall be the date this Agreement is signed by Seller, if Seller is the last to sign, or by Buyer, if Buyer is the last to sign. (Seller and Buyer combined are "Parties" herein and each is a "Party" herein.)

RECITALS

The Seller desires to transfer by dedication plat to Buyer approximately 0.0373 acres of land (the "Subject Property"), for the purpose of widening Richmond Road to install a culvert over a stream and a public sidewalk on a portion of the School's currently-owned property at 447 Richmond Road in the City of Richmond Heights and known as Permanent Parcel No. 662-22-022, which Subject Property is depicted in **Exhibit A**, attached hereto and incorporated by reference herein, for the purpose of eliminating a pedestrian bridge on the Seller's property that is in disrepair and would otherwise need to be replaced at substantial cost and establishing a public sidewalk in a public right-of-way (the "Project").

For the Project, the Buyer is also in need of:

- (a) A temporary work easement for the right to use a small portion of the School's land (the "Temporary Work Easement"), as also depicted in **Exhibit A** and set forth in the Grant of Temporary Work Easement with legal description in **Exhibit B** (both of which are attached hereto and incorporated by reference herein), to facilitate the construction of the new culvert over a stream and a public sidewalk, as well as necessary restoration work on a portion of the stream to the east of the new culvert; and
- (b) A permanent storm water easement for the right of access to the stream area east of the Richmond Road right-of-way for inspection, maintenance, operation, restoration and repair of a storm water stream conveyance system ("Storm Water Easement"), as also depicted in **Exhibit A** and set forth in the Grant of Easement with legal description in **Exhibit C** (both of which are attached hereto and incorporated by reference herein).

The property transactions and the public improvement Project that are the subject of this Agreement are for the purposes of providing safe pedestrian access for the Seller's students and the general public along the easterly side of Richmond Road and to educate Seller's students with respect to the environmental benefits and processes of natural stream restoration and maintenance.

The expense of the Project will be covered by a grant from the County of Cuyahoga to the City of Richmond Heights of American Rescue Plan Act ("ARPA") funds designated for this Project.

AGREEMENT

SECTION 1 - THE PROPERTY. Seller agrees to sell, and Buyer agrees to purchase:

- 1.1 - The certain real property situated in the City of Richmond Heights, the County of Cuyahoga, State of Ohio, and more particularly depicted in the attached **Exhibit A**, together with any improvements located thereon, if any, and all appurtenant easements, rights, and privileges (the "**Property**"). The Property is located at or near the southeast corner of the Seller's real property along Richmond Road and is a part of Permanent Tax Parcel No. 662-02-022 at 447 Richmond Road;
- 1.2 - The Temporary Work Easement for the right of access to construct a new stream culvert and public sidewalk and for stream restoration work as fully depicted and described in the attached **Exhibits A and B**; and
- 1.3 - The Storm Water Easement for the right of access to the stream area east of the Richmond Road right-of-way for inspection, maintenance, operation, restoration and repair of a storm water stream conveyance system, as fully depicted and described in the attached **Exhibits A and C**.

SECTION 2 - PURCHASE PRICE. Buyer agrees to pay Seller, as the purchase price for the Subject Property, Temporary Work Easement, and Storm Water Easement, the sum of Ten and 00/100 Dollars (\$10.00) (the "**Purchase Price**"). The Purchase Price shall be paid as follows:

Buyer shall deliver the Purchase Price directly to Seller on the Closing Date set forth herein.

SECTION 3 - ESCROW AND TITLE INSURANCE. [Omitted.]

SECTION 4 CONVEYANCE AND DEDICATION PLAT. On the Closing Date, Seller shall convey title to the Property by a signed offer of dedication on a dedication plat which is to be prepared by the Buyer's Engineer and which is mutually acceptable to both Parties (the "**Dedication Plat**"), free and clear of all liens and encumbrances, except the following: declarations, conditions, covenants, restrictions, easements, rights of way and other similar matters of record, and zoning and building ordinances.

SECTION 5 - PRORATION AND CLOSING COSTS. [Omitted.]

SECTION 6 - CLOSING. The transaction contemplated herein shall be closed at the office of the Mayor of the Buyer no later than five (5) days after the date of the last Party to sign this Agreement. To effect the Closing: Seller shall execute and deliver to Buyer's Mayor the Dedication Plat, the Temporary Work Easement, and the Storm Water Easement.

SECTION 7 - CONDITION OF PROPERTY.

7.1 - "As-Is" Condition. BUYER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT BUYER WILL HAVE, AS OF CLOSING, THOROUGHLY INSPECTED AND EXAMINED THE STATUS OF TITLE TO THE SUBJECT PROPERTY AND THE PHYSICAL

CONDITION OF THE SUBJECT PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE PURCHASE OF THE SUBJECT PROPERTY. BUYER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT BUYER IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE PHYSICAL CONDITION OF THE SUBJECT PROPERTY BY BUYER AND THAT BUYER IS PURCHASING, AND AT CLOSING WILL ACCEPT, THE SUBJECT PROPERTY ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITHOUT REPRESENTATIONS, WARRANTIES AND/OR COVENANTS, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE. BUYER ACKNOWLEDGES THAT SELLER HAS MADE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE THE SUBJECT PROPERTY.

7.2 - Release of Claims Under Environmental Laws. Buyer, on behalf of itself and all future owners and occupants of the Subject Property, hereby waives and releases Seller from any claims for recovery of costs associated with the conduct of any voluntary action or any remedial responses, corrective action or closure under any applicable federal, state or local environmental laws ("**Environmental Laws**"). For purposes of this Agreement, the term "Environmental Laws" shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq. and the Resource Conservation and Recovery Act ("RCRA"), 42 U. S.C. § 6901 et seq. as amended from time to time; and any similar federal, state and local laws and ordinances and the regulations and rules implementing such statutes, laws and ordinances.

SECTION 8 - REPRESENTATIONS AND WARRANTIES.

8.1 - By Seller. Seller represents and warrants to Buyer as of the Effective date that:

Seller has the capacity and authority to execute this Agreement and perform the obligations of Seller under this Agreement. All actions necessary to authorize the execution, delivery and performance of this Agreement by Seller have been taken and such actions have not been rescinded or modified. Upon the execution of this Agreement, this Agreement will be legally binding upon Seller and enforceable against Seller in accordance with all of its provisions. The person(s) signing this Agreement on behalf of Seller has been duly authorized to sign and deliver this Agreement on behalf of Seller.

8.2- By Buyer. Buyer represents and warrants to Seller as of the Effective Date that:

Buyer has the capacity and authority to execute this Agreement and perform the obligations of Buyer under this Agreement. All actions necessary to authorize the execution, delivery and performance of this Agreement by Buyer have been taken, and such actions have not been rescinded or modified. Upon the execution of this Agreement, this Agreement will be legally binding upon Buyer and enforceable against Buyer in accordance with all of its provisions. The person(s) signing this Agreement on behalf of Buyer has been duly authorized to sign and deliver this Agreement on behalf of Buyer.

SECTION 9 - BROKERS. Seller and Buyer confirm that they have not engaged any broker and/or real estate agent with respect to the transaction that is the subject of this Agreement and that no third party is entitled to any commission as a result of this transaction.

SECTION 10 — NOTICE. All notices, requests and other communications under this Agreement shall be in writing and shall be deemed given when made by personal delivery, or next or second business day by delivery by a nationally recognized overnight courier, or by electronic mail addressed as follows, and notice shall be deemed given on the date on which the notice is received by a party, in the case of personal delivery or on the next or second (whichever is applicable) business day immediately following receipt by the courier, in the case of an overnight courier:

If to Seller: Richmond Heights Local School District Board of
Education
447 Richmond Road
Richmond Heights, Ohio 44143
Attn: Renee T. Willis, Superintendent
Email: willis.renee@richmondheightsschools.org

If to Buyer: City of Richmond Heights
c/o Kim A. Thomas, Mayor
26789 Highland Road
Richmond Heights, Ohio 44143
Email: mayorthomas@richmondheightsohio.org

With a copy to: R. Todd Hunt, Director of Law
Roetzel & Andress, LPA
1375 E. 9th Street, 10th Floor
Cleveland, Ohio 44114
Email: rthunt@ralaw.com

SECTION 11 — ASSIGNMENT. Buyer may not assign its rights and obligations under this Agreement without Seller's prior written consent.

SECTION 12 - MISCELLANEOUS.

12.1 - Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

12.2 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

12.3 - Entire Agreement. This Agreement, together with the attached exhibits, contains all of the terms and conditions of the agreement between the parties, and any and all prior and contemporaneous oral and written agreements are merged herein.

12.4 - Modifications and Waivers. This Agreement cannot be changed nor can any provision of this Agreement, or any right or remedy of any Party, be waived orally. Changes and waivers can only be made in writing, and the change or waiver must be signed by the Party against

whom the change or waiver is sought to be enforced. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

12.5 - Parties Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

12.6 - Section Headings/Captions. The headings/captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

12.7 - Severability. If one or more of the provisions of this Agreement or the application thereof shall be determined to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions or any other application thereof shall in no way be affected or impaired.

12.8 - Time of the Essence. The Parties agree that time is of the essence and that the failure of a Party to perform any act on or before the date specified herein for performance thereof shall be deemed cause for the termination hereof by the other Party, without prejudice to other remedies available for default hereunder.

12.9 - Further Action. The Parties shall at any time, and from time to time on and after the Closing Date, upon the request of either, execute, acknowledge and deliver all such further acts, deeds, assignments and other instruments as may be reasonably required for the consummation of this transaction.

12.10 - Construction. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Seller and Buyer have contributed substantially and materially to the preparation of this Agreement and have thoroughly reviewed it prior to their execution of it.

12.11 - Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any parties other than Seller and Buyer.

[Remainder of page intentionally left blank]

IN TESTIMONY WHEREOF, the Parties hereto have caused this Agreement to be duly executed on the respective dates specified below.

SELLER:

**Richmond Heights Local School District Board
of Education**

By: _____

Print Name: _____

Title: _____

Date: _____

and

By: _____

Print Name: _____

Title: _____

Date: _____

BUYER:

City of Richmond Heights

By: _____
Kim A. Thomas, Mayor

Date: _____

Approved as to legal form and correctness:

R. Todd Hunt, Director of Law

FISCAL OFFICER'S CERTIFICATE

I certify that the money required to meet this engagement agreement has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund, free from any previous obligation or certification as required by Ohio Revised Code §5705.01 to §5705.47.

Director of Finance,
City of Richmond Heights, Ohio

Date

SKETCH TO ACCOMPANY
LEGAL DESCRIPTION
FOR
PERMANENT STORM WATER EASEMENT
&
TEMPORARY CONSTRUCTION EASEMENT

[illegible]

EXHIBIT B

GRANT OF TEMPORARY WORK EASEMENT FOR CONSTRUCTING A NEW STREAM CULVERT AND PUBLIC SIDEWALK AND FOR STREAM RESTORATION WORK

This Grant of Temporary Work Easement is made this ____ day of May, 2023, by and between the Richmond Heights Local School District Board of Education, hereinafter referred to as the "Grantor", and the City of Richmond Heights, Ohio, hereinafter referred to as the "Grantee".

WHEREAS, the Grantor is the owner of a certain parcel of land located in the City of Richmond Heights, known as Permanent Tax Parcel No. 662-22-022, and by a deed recorded at Volume ___, Page ___, of the Cuyahoga County, Ohio records (the "Property");

WHEREAS, Grantee desires to acquire a temporary construction easement permitting it and its contractors to enter upon the portion of the Grantor's Property to construct a new culvert over a stream and a public sidewalk and to restore a portion of the stream leading into said culvert, said portion of Grantor's Property (the "Easement Area") described as follows:

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio and known as being part of Permanent Parcel Number 662-22-022, bounded and described as follows:

Beginning on the centerline of Richmond Road, 60 feet wide, at its intersection with the Southwesterly corner of Permanent Parcel Number 662-22-022; thence along the Southerly Line of said Parcel, bearing South 89° 40' 30" East a distance of 30.00 feet to a point on the Easterly line of Richmond Road;

Thence continuing along said Southerly Line of said Parcel, bearing South 89° 40' 30" East a distance of 113.00 feet to a point and the Principal Place of Beginning;

Thence North 00° 36' 25" East a distance of 50.00 feet to a point;

Thence North 66° 00' 01" West a distance of 87.16 feet to a point;

Thence North 89° 40' 30" West a distance of 33.00 feet to a point on the aforesaid Easterly Line of Richmond Road;

Thence along said Easterly Line of Richmond Road, bearing North 00° 36' 25" East a distance of 40.00 feet to a point;

Thence South 89° 40' 30" East a distance of 150.00 feet to a point;

Thence South 00° 36' 25" West a distance of 125.00 feet to a point on the aforesaid Southerly Line of said Parcel;

Thence along said Southerly Line, bearing North 89° 40' 30" West, a distance of 37.00 feet to the Principal Place of Beginning and containing 10,545 square feet of land, be the same more or less but subject to all legal highways.

WHEREAS, Grantee will restore all disturbed areas with proper grading and landscaping.

NOW, THEREFORE, the Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations and in the further consideration of the right and privilege hereinafter given to the Grantee, its successors and assigns, for itself and its successors and assigns, does hereby give, grant, bargain and convey to the Grantee the temporary easement and right to enter upon the above-described Easement Area to construct a culvert over a stream and a public sidewalk in the public right-of-way adjacent to the Property and to restore a stream on the Property and to do all things necessary and incident thereto.

It is a condition of this instrument that the Grantee shall restore the surface of the Easement Area to a condition reasonably similar to that which existed prior to being disturbed.

Whereupon at the time of completion and acceptance of the completion of the aforesaid construction and restoration work as determined by the Engineer of the Grantee City of Richmond Heights, this Temporary Work Easement shall become null and void and all rights granted to Grantee hereunder shall extinguish.

IN WITNESS WHEREOF, the Grantor has executed and delivered this Grant of Temporary Work Easement this ____ day of May, 2023.

GRANTOR:

RICHMOND HEIGHTS LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION

By: _____

Print Name

Title

State of Ohio)
) SS
County of Cuyahoga)

Before me, a Notary Public in and for said County and State, personally appeared _____, the duly authorized _____ of the aforesaid Grantor, who did execute the foregoing instrument and acknowledged that the same is her/his free act and deed and the free act and deed of the Grantor.

In testimony whereof, I have hereunto set my hand and official seal at _____, Ohio, this ____ day of _____, 2023.

Notary Public

EXHIBIT C

GRANT OF EASEMENT FOR INSPECTING, MAINTAINING, RESTORING AND REPAIRING A STORM WATER STREAM CONVEYANCE SYSTEM

THIS GRANT OF EASEMENT, made this _____ day of _____ 2023, by and between the Richmond Heights Local School District Board of Education, hereinafter referred to as the "Grantor", and the City of Richmond Heights, Ohio, hereinafter referred to as the "Grantee".

WHEREAS, the Grantor is the owner of a certain parcel of land located in the City of Richmond Heights, Ohio, known by Permanent Parcel No. 662-02-022, and by deed recorded in Volume _____, Page ____ of the Cuyahoga County Deed Records (the "Property");

WHEREAS, the City of Richmond Heights desires to obtain an easement permitting the City of Richmond Heights, County of Cuyahoga, and/or the Northeast Regional Sewer District to enter upon a portion of the Property of the Grantor to maintain, operate, restore and repair a storm water stream conveyance system on a portion of the Property (the "Easement Area") which is described as follows:

Situated in the City of Richmond Heights, County of Cuyahoga and State of Ohio and known as being part of Permanent Parcel Number 662-22-022, bounded and described as follows:

Beginning on the centerline of Richmond Road, 60 feet wide, at its intersection with the Southwesterly corner of Permanent Parcel Number 662-22-022; thence along the Southerly Line of said Parcel, bearing South 89° 40' 30" East a distance of 30.00 feet to a point on the Easterly Line of Richmond Road and the Principal Place of Beginning;

Thence continuing along said Southerly Line of said Parcel, bearing South 89° 40' 30" East a distance of 113.00 feet to a point;

Thence North 00° 36' 25" East a distance of 50.00 feet to a point;

Thence North 66° 00' 01" West a distance of 87.16 feet to a point;

Thence North 89° 40' 30" West a distance of 33.00 feet to a point on the aforesaid Easterly Line of Richmond Road;

Thence along said Easterly Line of Richmond Road, bearing South 00° 36' 25" West, a distance of 85.00 feet to the Principal Place of Beginning and containing 8,205 square feet of land, be the same more or less but subject to all legal highways.

NOW, THEREFORE, the Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations and in further consideration of the right and privilege

hereinafter given to said Grantee, its successors and assigns, for itself and its successors and assigns, does hereby give, grant, bargain, and convey to the aforesaid Grantee the easement and perpetual right to enter upon the above-described Easement Area and to maintain, operate, restore and repair the storm water stream conveyance system thereon when necessary and at any time for any of the foregoing purposes and the doing of all things necessary or incident thereto.

IN WITNESS WHEREOF, the Grantor has executed and delivered this Grant of Easement this ____ day of _____, 2023.

GRANTOR:
RICHMOND HEIGHTS LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION

By: _____

Print Name

Title

State of Ohio)
)
County of Cuyahoga)

Before me, a Notary Public, in and for said County and State, personally appeared _____, the duly authorized _____ of the Grantor, who did execute the foregoing instrument and acknowledged that the same is her/his free act and deed and the free act and deed of the Grantor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio this _____ day of _____, 2023.
