

ORDINANCE NO. 2013 - 66

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR SALE AND PURCHASE AND AN OFFER TO SELL REAL PROPERTY WITH K.P. PROPERTIES OF OHIO IN AN AMOUNT NOT TO EXCEED \$2,300,000 AND TO PURSUE DESIGN AND CONSTRUCTION CONTRACTS IN AN AMOUNT NOT TO EXCEED \$2,700,000 RELATED TO THE MUNICIPAL GARAGE PROJECT AND DECLARING AN EMERGENCY

WHEREAS, the Council for the City of Mason has deemed it a necessary and proper public purpose to acquire the real property located at 3900 State Route 741 and to make all necessary improvements for the purpose of establishing and maintaining a municipal garage; and

WHEREAS, the City has negotiated a purchase price for the property agreeable to all parties; and

WHEREAS, Council has determined that it will be necessary to pursue certain design and construction contracts for the improvements necessary to utilize the property as a municipal garage.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, seven members elected thereto concurring:

Section 1. That the City Manager is hereby authorized to execute an Offer to Sell substantially in the form of the Offer attached hereto as Exhibit "A," and incorporated herein by reference, and a Contract for Sale and Purchase substantially in the form of the contract attached hereto as Exhibit "B," and incorporated herein by reference, for the acquisition of property located at 3900 State Route 741, Mason, Ohio 45040 at a cost not to exceed \$2,300,000.

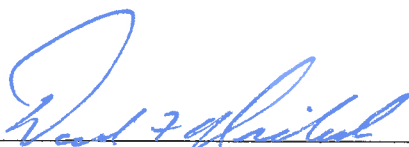
Section 2. That the City Manager is further authorized to pursue any and all necessary contracts related to the design, construction and other related necessary improvements to the property such that the property may reasonably be used as a municipal garage. Said contracts shall not exceed \$2,700,000.

Section 3. The funds authorized by this ordinance become and they are hereby set aside and appropriated from the General Capital Improvement Fund for the payments as described in this ordinance.

Section 4. That the Finance Director is hereby authorized to pay for payments from any of the foregoing appropriations for the purchase contract and subsequent improvements authorized in Sections 1 and 2 in an amount not to exceed \$5,000,000.

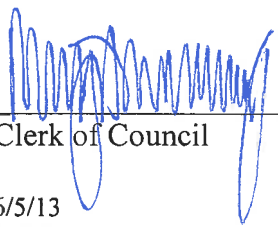
Section 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need to execute the contract at the earliest possible date in order to comply with the terms of the contract.

Passed this 8th day of July, 2013.



Mayor

Attest:



Clerk of Council

6/5/13
1145969.1



OFFER TO SELL REAL PROPERTY

This Offer to Sell Real Property ("Offer") is made by and between K.P. Properties of Ohio LLC, an Ohio limited liability company, hereinafter, "Seller," whose address is 3900 State Route 741, Mason, Ohio 45040, and the City of Mason, Ohio, an Ohio municipal corporation, hereinafter, "Purchaser," whose address is 6000 Mason Montgomery Road, Mason, Ohio 45040.

RECITAL:

WHEREAS, Seller desires to sell and Purchaser desires to purchase, the real property located at 3900 State Route 741, Mason, Ohio 45040, hereinafter, "Property," more specifically described as Auditor's Parcel no. 12203000280, under the terms and conditions set forth in this Offer to Sell Real Property;

NOW THEREFORE, in consideration of the Recital, and the mutual promises contained herein, the parties hereto hereby agree as follows:

1. **Sale and Conveyance of Property.**

Seller offers to sell and convey to Purchaser all of Seller's right, title and interest in and to the Property and all improvements and fixtures thereon, and all appurtenant rights, privileges, and easements, located thereon, at the price and upon such other terms and conditions as are set forth herein. Seller shall convey transferable and marketable title to the Property by general warranty deed, free, clear and unencumbered, subject only to easements and restrictions of record, which do not adversely affect Purchaser's intended use of the property, and are prior approved by Purchaser's attorney.

2. **Seller's Certifications.**

Seller certifies the following facts regarding the Property:

A. Seller is the sole owner of and has proper authority to sell the entire undivided fee simple interest in the Property;

B. Seller has not placed any environmental contaminants on the Property including, but not limited to, asbestos, PCB fluids, underground storage tanks, or other toxic, hazardous or contaminated substances; and

C. The Property is free from any County, State or Federal orders affecting the Property.

3. **Purchase Price.**

The purchase price for the Property shall be Two Million Three Hundred Thousand

Dollars (\$2,300,000.00), payable as follows:

\$40,000.00
OR
E.H.

A. Upon execution of the Contract for Sale and Purchase by the parties, as set forth in Section 5 E below, Purchaser shall make an earnest money deposit in the sum of Ten Thousand Dollars (~~\$10,000.00~~) to be applied to the purchase price of the Property, and to be held by Wood & Lamping LLP upon execution of the Contract for Sale and Purchase by both parties. In the event of Purchaser's default, the earnest money shall be forfeited and paid to Seller as liquidated damages.

Sixty OR E.H.

B. The balance of the purchase price, Two Million Two Hundred ~~Ninety~~ Thousand Dollars ~~\$2,290,000.00~~, shall be paid by the Purchaser on the date of Closing.

#2,260,000.00

4. Closing and Possession.

Closing on or before August 13th, 2013 OR E.H.

~~The closing shall occur on the date negotiated by the parties in the Contract for Sale and Purchase, as set forth in Section 5 E below.~~ Purchaser shall receive possession of the Property at Closing. Upon Seller's delivery of possession to Purchaser, the Property shall be in an uncluttered and sanitary condition, free of any waste or refuse materials.

5. Contingency.

Purchaser's performance under this Offer is contingent upon satisfaction of the following events, unless any such event is expressly waived by Purchaser by written notice to Seller of any such waiver:

A. Purchaser conducting a Phase I Environmental inspection/investigation, and upon review, determining in Purchaser's sole discretion, that the Property is free from environmental contaminants and hazardous materials. Seller shall permit Purchaser to make any reasonable inspection of the Property; and

B. Purchaser reviewing and approving the title and survey to the real estate; and

C. Purchaser determining that all utilities are available to the Property on terms and conditions satisfactory to the Purchaser.

D. Approval of the purchase of the Property by Mason City Council.

E. Execution of a Contract for Sale and Purchase by Purchaser and Seller incorporating the terms hereof and any additional terms, conditions and timing, deemed necessary and appropriate.

F. In the event that any contingency under this Offer is not acceptable to Seller, in either parties' sole and absolute discretion, this Offer may either terminate without further liability or Seller and Purchaser may agree to enter into further negotiations.

6. Real Estate Taxes, Insurance and Maintenance.

Seller shall pay all real estate taxes and assessments due and payable as of the date of closing. Further, Seller and Purchaser shall prorate all real estate taxes and assessments, which

are not yet due and payable but are a lien, through the date of closing.

7. Sole Offer and Merger.

The parties agree that this Offer constitutes their entire agreement and no oral or implied agreement exists. Any amendments to this Offer shall be made in writing, signed by both parties and copies shall be attached to the original agreement. This Offer, if accepted, shall be binding upon the parties, their respective heirs, assigns, and successors. The provisions of this Offer to Sell Real Estate shall survive the conveyance by deed of Seller's interest to Purchaser.

8. Broker's Commission.

Seller shall be responsible for the payment of any broker's commission to Collier's International, and Seller shall protect and save harmless Purchaser against the claim of any broker hired by Seller with respect to this Offer or the purchase and sale of the Property.

9. General Provisions.

A. Headings of paragraphs are for the convenience of reference only and shall not be construed as part of this Agreement.

B. This Agreement shall be governed in all respects by the laws of the State of Ohio.


C. The parties acknowledge that this Offer to Sell is the result of prior negotiations between them, but that Purchaser is only authorized to act pursuant to legislation of Mason City Council.

10. Expiration and Acceptance.

This Offer to Sell shall remain open until 4 p.m. Eastern Daylight Time on the 28th day of June, 2013, and a signed copy shall be returned to Purchaser. Purchaser's acceptance by approval of Council shall occur on or before July 8, 2013, and a Contract for Sale and Purchase shall be executed thereafter.

IN WITNESS WHEREOF, Seller has caused this Agreement to be executed as of the ___ day of June, 2013.

SELLER:
K.P. Properties of Ohio LLC

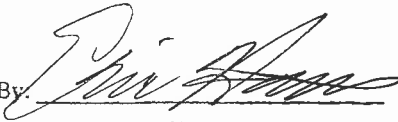
By: 

David Knust

Managing/Authorized Member

PURCHASER: City of Mason, Ohio

Dated: July 9, 2013

By: 
Eric Hansen, City Manager

Ord. 2013-66

APPROVED AS TO FORM:

Jeffrey D. Forbes, Law Director

1150382.1