

MUNICIPAL ORDER 11-2023

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT FOR THE ACQUISITION OF PROPERTY LOCATED ON CARTER ROAD, WITHIN THE LARGER TRACT DESIGNATED AS 2808 WEST PARRISH AVENUE, CONTAINING 3.55 ACRES, MORE OR LESS, FOR USE IN THE YORK DITCH STORMWATER PROJECT.

WHEREAS, the Joel David Osborne Irrevocable Trust, Nancy T. Wilson, Bonnie T. Hayden, James S. Tong, Mariann Hamzeh, Brenda K. Sanders, the Charles W. Osborne Revocable Living Trust dated September 14, 2000, the Decedent's Trust of the Thomas D. Osborne Living Trust dated May 29, 2003, the George E. Osborne Testamentary Trust, Patricia Osborne, Marilyn N. Osborne, and Daniel Joseph Osborne own certain real property located at 2808 West Parrish Avenue in Owensboro, Daviess County, Kentucky; and

WHEREAS, the property owners now desire to sell an approximate 3.55-acre portion of the real property located on Carter Road, within the larger tract designated as 2808 West Parrish Avenue, in Owensboro, Daviess County, Kentucky; and

WHEREAS, the City of Owensboro seeks to acquire said property for use in the York Ditch Stormwater Project.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. The Board of Commissioners hereby authorizes and directs the Mayor and other appropriate city officials to execute a real estate purchase agreement which sets forth the terms and conditions for the City's acquisition of the property

located on Carter Road, within the larger tract designated as 2808 West Parrish Avenue. Said property is more particularly described in the Real Estate Purchase Agreement attached as Exhibit "A".

Section 2. That the City of Owensboro, Kentucky, by and through its Board of Commissioners, hereby approves the purchase of 3.55 acres, more or less, of land on Carter Road, within the larger tract designated as 2808 West Parrish Avenue, in accordance with the terms of the proposed real estate purchase agreement mentioned above in Section 1, as such conveyance is for use in the York Ditch Stormwater Project..

Section 3 That the Mayor, City Manager and appropriate staff members are hereby authorized to sign any and all deeds or other documents deemed necessary to the furtherance of the authority outlined herein.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 21st day of February, 2023.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

EXHIBIT “A”

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") is made and entered into on this ____ day of _____, 2023, by and between Joel David Osborne Irrevocable Trust, Daniel Osborne, Trustee, of 1421 Triplett Street, Owensboro, KY 42303; Nancy T. Wilson, unmarried, of 2828 Hillside Drive, Owensboro, KY 42301; Bonnie T. Hayden and Mark Hayden, wife and husband, of 1410 Parkview Drive, Owensboro, KY 42301; James S. Tong and Venessa Tong, husband and wife, of 10433 Ky 144, Philpot, KY 42366; Mariann Hamzeh and Ali Hamzeh, wife and husband, of 1615 N. Sylvania, Ft. Worth, TX 76111; Brenda K. Sanders and Michael Sanders, wife and husband, of P.O. Box 134, Oaktown, IN 47561; Mary O. Clark, Successor Trustee of the Charles W. Osborne Revocable Living Trust dated September 14, 2000, of 1530 Daniels Lane, Owensboro, KY 42303; Jean C. Osborne, Trustee of the Decedent's Trust of the Thomas D. Osborne Living Trust dated May 29, 2003, of 2718 Eastside Street, Santa Ana, CA 92704; Patricia L. Osborne and Mark E. Osborne, Co-Trustees of the George E. Osborne Testamentary Trust, of 3201 Hwy 554, Owensboro, KY 42301; Patricia Osborne, unmarried, of 3201 Hwy 554, Owensboro, KY 42301; Marilyn N. Osborne, unmarried, of 1405 E. 4th Street, Owensboro, KY 42303, and Daniel Joseph Osborne, unmarried, of 1421 Triplett Street, Owensboro, KY 42303, (hereafter the "Sellers"), and the City of Owensboro, Kentucky, a Kentucky municipal corporation of the home rule class, 101 East Fourth Street, P.O. Box 10003, Owensboro, Kentucky 42302-9003 (hereafter the "Buyer"). The Seller and Buyer may also be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Sellers own certain real property and improvements located at 2808 Parrish Avenue W. in Owensboro, Daviess County, Kentucky, and have agreed to sell a certain portion containing approximately 3.55 acres, more or less, (the "Property") to Buyer; and

WHEREAS, the Sellers acknowledge that they have been informed of the Buyer's desire to acquire the Property; and

WHEREAS, the Parties desire to evidence their agreement by this writing, which supersedes any prior contract(s) and/or communications (oral or written) between the Parties regarding the sale and purchase of the Property.

NOW, THEREFORE, in consideration of the purchase price to be paid by Buyer, the mutual covenants set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged by Sellers, the Parties agree as follows:

- (1) The Property consists of a tract of land containing 3.55 acres, more or less (with the actual acreage to be determined by survey) located on Carter Road within the larger tract designated as 2808 Parrish Avenue W. , in Owensboro, Daviess County, Kentucky, and is more particularly described on Exhibit A and shown on the map attached as Exhibit B, which are attached hereto and incorporated by reference.
- (2) The purchase price for the Property shall be: Four Hundred Fifty Thousand Dollars (\$450,000.00) (the "Purchase Price"), which the Buyer shall pay contemporaneously with the execution of a General Warranty Deed.

- (3) Sellers shall deliver insurable fee simple title to the Property and shall convey same to Buyer by deed of General Warranty.
- (4) Sellers shall execute a General Warranty Deed in form and substance satisfactory to Buyer, in its reasonable discretion, conveying title to the Property to Buyer as required above. Sellers shall further provide such other documentation reasonably required by Buyer's title insurance company, if any, to establish authority for the execution of the deed and any other closing documents for the Seller.
- (5) Buyer shall pay for the costs of a survey, preparation of the deed, title examination, title insurance, if any, and recording of the deed.
- (6) Sellers do hereby indemnify, defend, and hold Buyer harmless from any and all costs, losses, damages or expenses, of any kind or nature (including without limitation mechanics' liens, reasonable attorneys' fees, and expenses), arising from or associated in any way with the Property, until such time as the Buyer is tendered and accepts possession of the Property. Notwithstanding anything to the contrary herein, the indemnity set forth herein shall survive the closing and any termination of this Agreement.
- (7) The Parties agree that the risk of any loss or damages to the subject property prior to Buyer being tendered and accepting possession of the Property shall remain with the Sellers.
- (8) Sellers make the following warranties and representations:
 - (a) The undersigned Sellers are the only entities or persons holding title to the Property.

- (b) There is no legal or administrative action, suit, or proceeding pending or known to be threatened against or affecting Sellers with respect to the Property or against the Property which would adversely affect Sellers' right to convey the Property to Buyer as contemplated in this Agreement.
- (c) None of the Sellers is a party to any other contract for the sale or lease of the Property that conflicts with or results in a breach of this Agreement. Sellers acknowledge and agree that, at Sellers' expense, it must provide for the resolution and extinguishment of any and all claims against and/or interests in the Property held by third parties and/or arising out of leasehold interests.
- (d) Sellers will not willfully allow or be a party to the preparation, execution, or recordation of any restriction, easement, or other matter affecting the title to the Property prior to closing, unless the Sellers obtains Buyer's written approval of such restriction, easement, or other matter.
- (e) Sellers have no actual knowledge of any adverse environmental condition existing upon or within the Property.
- (f) The Trustees signing on behalf of certain Sellers are authorized by the terms of their respective trusts to sign this Purchase Agreement and the conveyance of the Property is consistent with the terms of the trusts.
- (g) This Agreement constitutes the valid and binding obligation of the Sellers and is enforceable against the Sellers in accordance with its terms.
- (h) Subject to the other provisions herein, the Property is being sold "as is" with all of its faults and deficiencies.

- (9) The Parties agree that “time is of the essence” with respect to all provisions herein and a closing on the property shall be held on or before April 1, 2023, or such later date as the parties may agree. Sellers agree that they shall surrender possession of the property immediately upon delivery of the deed at the closing.
- (10) Buyer’s obligation to purchase is conditioned upon approval of the transaction by the Owensboro Board of Commissioners and its appropriation of funds for the purchase.
- (11) Sellers agree to consent to annexation of the entire tract containing 18.332 acres, more or less, of which the Property is a part.
- (12) Buyer agrees that Sellers retain all rights to any dirt which is removed from the Property, and agrees to stockpile the dirt on the remainder of the property located at 2704 Parrish Avenue, as directed by Sellers. Sellers agree to provide an access path on the remaining tract to allow transport of the dirt to the Sellers’ desired stockpile location. The Buyer will not be responsible for crop damage or damage to drain tiles or other underground infrastructure as a result of the dirt moving and stockpiling. Buyer will seed and straw the stockpile and restore the access path to a reasonable condition upon completion. Sellers will be responsible for any future erosion control measures needed.
- (12a) Buyer is purchasing the property for the purpose of constructing a regional stormwater basin. Buyer agrees to size the basin to allow for up to 10 acres of the remaining property to drain to the basin in a 100% impervious developed condition. Additional acreage (more than 10 acres) of the remaining site may drain to the basin if the developed condition is less than 100% impervious, as demonstrated to

be equivalent by engineering calculations. Sellers or future owners of the remaining tract will be responsible for complying with all other local, state, and federal requirements (including water quality).

- (13) Sellers agree to provide Buyer with proof that any guardianships previously in effect have expired as to any interests in the Property.
- (14) The ad valorem real property taxes shall be prorated as of the date of closing, with the Sellers being responsible for such taxes up until the closing date.
- (15) This Agreement represents the entire agreement between the Parties. There are no other agreements or promises regarding the subject matter of this Agreement which are not set forth herein.
- (16) The Parties expressly agree that this Agreement is intended to be as broad and inclusive as permitted by applicable law and, if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.
- (17) The Parties, by signing and executing this Agreement, represent and warrant that they do so with full authority to so act and warrant that they sign and execute this Agreement after consultation with their respective counsel.
- (18) This Agreement may be amended, modified, supplemented, or changed, in whole or in part, only by an agreement in writing making specific reference to this Agreement and executed by each of the Parties hereto. Any of the terms and conditions of this Agreement may be waived in whole or in part, but only by an agreement in writing making specific reference to this Agreement and executed by the Party waiving said terms and/or conditions. The failure of any Party hereto to

insist upon strict performance of or compliance with the provisions of this Agreement shall not constitute a waiver of any right of any such Party hereunder or prohibit or limit the right of such Party to insist upon strict performance or compliance at any other time.

- (19) This Agreement and the rights of the Parties hereunder may not be assigned, and the obligations of the Parties hereunder may not be delegated, in whole or in part, by any Party without the prior written consent of the other Party hereto, which consent shall not be unnecessarily withheld or delayed.
- (20) This Agreement may be signed in one or more counterpart copies. Each counterpart copy shall constitute an Agreement, and together they form the fully executed Agreement.
- (21) This Agreement shall be construed and enforced in accordance with, and shall be governed by, the laws of the Commonwealth of Kentucky, without regard to its principles of conflict of laws. The Parties hereby consent to jurisdiction and venue in the Circuit Court of Daviess County, Kentucky, and hereby waive any objection to the jurisdiction of, or the venue of an action instituted in, such court.

IN WITNESS WHEREOF, the Parties have executed this Real Estate Purchase Agreement, on this the _____ day of _____, 2023.

SELLERS:

Daniel Osborne, Trustee of the Joel David
Osborne Irrevocable Trust

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Daniel Osborne, Trustee of the Joel David Osborne Irrevocable Trust, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

SELLERS:

Nancy T. Wilson

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Nancy T. Wilson, unmarried, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large

My commission expires: _____

ID # _____

SELLERS:

Bonnie T. Hayden

Mark Hayden

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Bonnie T. Hayden and Mark Hayden, wife and husband, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large

My commission expires: _____

ID # _____

SELLERS:

James S. Tong

Venessa Tong

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by James S. Tong and Venessa Tong, husband and wife, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large

My commission expires: _____

ID # _____

SELLERS:

Mariann Hamzeh

Ali Hamzeh

STATE OF TEXAS)
COUNTY OF _____)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Mariann Hamzeh and Ali Hamzeh, wife and husband, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large

My commission expires:

ID #

SELLERS:

Brenda K. Sanders

Michael Sanders

STATE OF INDIANA)
COUNTY OF _____)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Brenda K. Sanders and Michael Sanders, wife and husband, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large

My commission expires: _____

ID # _____

SELLERS:

Mary O. Clark, Successor Trustee of the
Charles W. Osborne Revocable Living
Trust dated September 14, 2000

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and
acknowledged before me by Mary O Clark, Successor Trustee of the Charles W. Osborne
Revocable Living Trust dated September 14, 2000, on this the _____ day of
_____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

SELLERS:

Jean C. Osborne, Trustee of the Decedent's Trust
of the Thomas D. Osborne Living Trust
dated May 29, 2003

STATE OF CALIFORNIA)
COUNTY OF _____)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Jean C. Osborne, Trustee of the Decedent's Trust of the Thomas D. Osborne Living Trust dated May 29, 2003, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

SELLERS:

Patricia L. Osborne, Co-Trustee of the George
E. Osborne Testamentary Trust

Mark E. Osborne, Co-Trustee of the George
E. Osborne Testamentary Trust

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and
acknowledged before me by Patricia L. Osborne and Mark E. Osborne, Co-Trustees of
the George E. Osborne Testamentary Trust, on this the _____ day of
_____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

SELLERS:

Patricia Osborne

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and
acknowledged before me by Patricia Osborne, unmarried, on this the _____ day of
_____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

SELLERS:

Marilyn N. Osborne

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Marilyn N. Osborne, unmarried, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

SELLERS:

Daniel Joseph Osborne

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Daniel Joseph Osborne, unmarried, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

BUYER:

CITY OF OWENSBORO, KENTUCKY

By: _____
Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The foregoing Real Estate Purchase Agreement was signed, sworn to and acknowledged before me by Thomas H. Watson, Mayor, and Beth Davis, City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the _____ day of _____, 2023.

Notary Public, State of Kentucky at Large
My commission expires: _____
ID # _____

Prepared by:

Mark Pfeifer, City Attorney
City of Owensboro
101 E. 4th Street
Owensboro, KY 42303
(270)687-8556

Exhibit A

3.55 acres of that certain tract of land containing 20.08 acres, more or less, shown on the plat of the Osborne Estate Division appearing of record in Plat Book 15, at page 82, Office of the Daviess County Clerk, to which plat reference is hereby made for a more particular description of said tract.

There is excepted from the aforesaid tract the following parcels:

- a. A parcel containing 1.337 acres, more or less, conveyed to Taylor Food Associates, a North Carolina partnership, by deed from David F. Osborne, et al., dated November 30, 1993, and of record in Deed Book 631, at page 225, Office of the Daviess County Clerk;
- b. Two parcels containing 36,610 square feet, more or less, and 868 square feet, more or less, respectively, conveyed to Commonwealth of Kentucky, for the use and benefit of the Transportation Cabinet, by deed from David F. Osborne, et al., dated April 11, 1998, and of record in Deed Book 686, at page 186, Office of the Daviess County Clerk;
- c. A parcel containing 0.441 acre, more or less, conveyed to Dipper Land, LLC, a Kentucky limited liability company, by deed from Nancy T. Wilson, et al., dated November 30, 2020, and of record in Deed Book 1038, at page 448, Office of the Daviess County Clerk.

EXHIBIT B

