

CITY OF OBERLIN, OHIO
ORDINANCE No. 21-33 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BOARD OF EDUCATION OF THE OBERLIN CITY SCHOOL DISTRICT FOR THE EXCHANGE OF VACANT LAND OWNED BY THE CITY FOR THE PROSPECT ELEMENTARY SCHOOL AS AN EMERGENCY MEASURE

WHEREAS, The City of Oberlin, (“City”) is the owner of certain vacant land being Lorain County Auditor’s Permanent Parcel No. 09-00-076-101-044, (“City Property”); and

WHEREAS, the Board of Education of the Oberlin City School District, (“CSD”) is the owner of the Prospect Street Elementary School, the same being the Lorain County Auditor’s Permanent Parcel Nos. 09-00-084-107-030, 09-00-084-107-031, 09-00-084-107-032, 09-00-084-107-033, and 09-00-084-107-034, (“CSD Property”); and

Whereas the City and the CSD desire to enter into an agreement for the mutual and simultaneous exchange of their respect properties.

THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio:

SECTION 1: That this Council finds, determines and declares the City Property is not currently needed for any municipal purpose.

SECTION 2: The City Manager is hereby authorized and directed to enter into an Exchange Agreement in substantially the form attached hereto to as **Exhibit A**, (“Agreement”) under which the City will convey all of its right, title and interest in and to the City Property to the CSD which will simultaneously convey all of its right title and interest in and to the CSD Property to the City and to execute any and all other documents or instruments necessary or convenient to conclude the exchange of said properties and to otherwise fulfill the terms of the Agreement.


SECTION 3: It is hereby found and determined that all formal action of this Council concerning or related to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any 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 4: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: **to enable the city of complete its due diligence inspection of the CSD Property to permit the conclusion of the exchange on or before September 30, 2021 as is provided in said Agreement**

and provided that it is elevated to emergency status by the affirmative vote of at least five members of Council and receives the affirmative vote of at least five members of Council upon final passage, it shall go into full force and effect from and immediately after its passage; otherwise, it shall take effect at the earliest period allowed by law.

PASSED: 1st Reading: May 24, 2021
2nd Reading: June 7, 2021
3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



LINDA SLOCUM
PRESIDENT OF COUNCIL

POSTED: 06/08/2021

EFFECTIVE DATE: 06/07/2021

EXHIBIT A

EXCHANGE AGREEMENT

This Exchange Agreement (the “Agreement”), made effective ____, 2021, is by and between the Board of Education of the Oberlin City School District, an Ohio public school district and political subdivision organized pursuant to the Constitution and laws of the State of Ohio (the “Board”), and the City of Oberlin, Ohio, an Ohio chartered municipal corporation and political subdivision organized pursuant to the Constitution and laws of the State of Ohio (the “City”).

WHEREAS, the Board is the owner of certain real property known as Prospect Elementary School located at 36 S. Prospect Street, Oberlin, Ohio, and identified in the records of the Lorain County, Ohio Auditor as Permanent Parcel Nos. 09-00-084-107-030, 09-00-084-107-031, 09-00-084-107-032, 09-00-084-107-033, and 09-00-084-107-034, which real property is more particularly described in Exhibit A attached hereto and made a part hereof (“School District Property”); and

WHEREAS, the City is the owner of certain real property identified in the records of the Lorain County, Ohio Auditor as Permanent Parcel No. 09-00-076-101-044, which real property is more particularly described in Exhibit B attached hereto and made a part hereof (the “City Property”); and

WHEREAS, the Board and the City desire to exchange the School District Property and the City Property pursuant to Section 3313.40 of the Revised Code (the School District Property and the City Property may be referred to collectively herein as the “Properties”); and

WHEREAS, the Board and the City have determined that an exchange of the Properties will be mutually beneficial;

NOW, THEREFORE, the City and the Board agree as follows:

WITNESSETH:

1. Exchange of the Properties. The Board does hereby agree to convey to the City, under the conditions hereinafter provided, all of the Board's right, title, and interest in the School District Property in exchange for the City Property, and the City does hereby agree to convey to the Board, under the conditions hereinafter provided, all of the City's right, title, and interest in the City Property in exchange for the School District Property.

2. Title Company and Escrow Agent. Chicago Title Insurance Company, with an address of 1111 Superior Avenue, Suite 600 Cleveland, OH, 44114, is hereby designated as the "Title Company" and escrow agent in connection with this transaction.

3. Inspections/Due Diligence by the Board. Prior to Closing, the Board shall have the opportunity to obtain approvals of such governmental and quasi-governmental authorities and to conduct and obtain such tests, surveys, studies, reports and inspections in order to determine in its sole discretion if the City Property is suitable for the Board's acquisition. The cost of obtaining such approvals and of conducting and obtaining such tests, surveys, studies, reports and inspections and in determining the suitability of the City Property shall be the sole responsibility of the Board. The City shall provide to the Board reasonable access to the City Property so that the Board may conduct its inspections. If any tests, surveys, studies, reports and inspections disclose any condition unacceptable to the Board, then the Board shall deliver written notice to the City, and the City, at its sole option, may remedy the condition that the Board has objected to. In the event that the City is unwilling or unable to cure any objection made by the Board prior to Closing, the Board may, by written notice to the City, either (i) terminate this Agreement, at which time the parties shall be released from all further obligations under this Agreement, or (ii) waive such condition. If the Board has not notified the City of any unacceptable condition within fourteen (14) days prior to Closing, then any such condition shall be deemed to be waived by the Board. The Board must restore the City Property to substantially its

original condition after the tests, surveys, studies and inspections are conducted. Notwithstanding, the forgoing, the Board shall have the right and option to terminate this Agreement in the event the Board determines, in its sole discretion, that the City Property is incompatible with the Board's intended use of said property.

4. Status of Title to the City Property. Within twenty one (21) days following the date of this Agreement, the City shall, at its sole cost and expense, provide the Board a title commitment for the City Property prepared by the Title Company. The Board shall notify the City of its objection to any matter shown in the commitment. However, if the City is unable or unwilling to remove any such objections prior to the Closing, then the Board's sole remedy shall be either to (a) terminate this Agreement, at which time the parties shall be released from all further obligations under this Agreement, or (b) waive the objections and accept such title as the City is able to convey. If the Board has not notified the City of any objections within fourteen (14) days prior to Closing, then any such condition shall be deemed to be waived by the Board.

At the Closing, the City shall furnish the Board and the Title Company with a seller's affidavit as to mechanic's and materialmen's liens, persons in possession of the property, and similar title matters required by the Title Company as a condition of its deletion of the standard printed general exceptions from the title policy. The Board at its cost shall update the title commitment for the City Property to the date of Closing. If such update shows any exceptions not previously shown on the title commitment, then the Board shall have the right to object to any such additional exception. If the Board does so object to such additional exception, then the City shall either (a) cure or remove the additional exception prior to Closing or (b) notify the Board that the City is unable or unwilling to cure or remove the exception. If the City notifies the Board that the City is unwilling or unable to remove such additional exceptions, or if the City otherwise fails to cure such additional exceptions prior to the Closing, then the Board may either terminate this Agreement or waive the title objection and proceed

with the Closing on the purchase of the City Property. The Board, at its option, may waive the purchase of a title insurance policy.

5. Inspections/Due Diligence by the City. Prior to Closing, the City shall have the opportunity to obtain approvals of such governmental and quasi-governmental authorities and to conduct and obtain such tests, surveys, studies, reports and inspections in order to determine in its sole discretion if the School District Property is suitable for the City's acquisition. The cost of obtaining such approvals and of conducting and obtaining such tests, surveys, studies, reports and inspections and in determining the suitability of the School District Property shall be the sole responsibility of the City. The Board shall provide to the City reasonable access to the School District Property so that the City may conduct its inspections. If any tests, surveys, studies, reports and inspections disclose any condition unacceptable to the City, then the City shall deliver written notice to the Board, and the Board, at its sole option, may remedy the condition that the City has objected to. In the event that the Board is unwilling or unable to cure any objection made by the City prior to Closing, the City may, by written notice to the Board, either (i) terminate this Agreement, at which time the parties shall be released from all further obligations under this Agreement, or (ii) waive such condition. If the City has not notified the Board of any unacceptable condition within fourteen (14) days prior to Closing, then any such condition shall be deemed to be waived by the City. The City must restore the School District Property to substantially its original condition after the tests, surveys, studies and inspections are conducted. Notwithstanding, the foregoing, the City shall have the right and option to terminate this Agreement in the event the City determines, in its sole discretion, that the School District Property is incompatible with the City's intended use of said property.

6. Status of Title to the School District Property. Within twenty one (21) days following the date of this Agreement, the Board shall, at its sole cost and expense, provide to the City a title commitment for the School District Property prepared by the Title Company. The City shall notify the Board of its objection to any matter shown in the commitment. However, if the Board is unable or

unwilling to remove any such objections prior to the Closing, then the City's sole remedy shall be either to (a) terminate this Agreement, at which time the parties shall be released from all further obligations under this Agreement, or (b) waive the objections and accept such title as the Board is able to convey. If the City has not notified the Board of any objections within fourteen (14) days prior to Closing, then any such condition shall be deemed to be waived by the City.

At the Closing, the Board shall furnish the City and the Title Company with a seller's affidavit as to mechanic's and materialmen's liens, persons in possession of the property, and similar title matters required by the Title Company as a condition of its deletion of the standard printed general exceptions from the title policy. The City at its cost shall update the title commitment for the School District Property to the date of Closing. If such update shows any exceptions not previously shown on the title commitment, then the City shall have the right to object to any such additional exception. If the City does so object to such additional exception, then the Board shall either (a) cure or remove the additional exception prior to Closing or (b) notify the City that the Board is unable or unwilling to cure or remove the exception. If the Board notifies the City that the Board is unwilling or unable to remove such additional exceptions, or if the Board otherwise fails to cure such additional exceptions prior to the Closing, then the City may either terminate this Agreement or waive the title objection and proceed with the Closing on the purchase of the School District Property. The City, at its option, may waive the purchase of a title insurance policy.

7. Condition of the City Property. The City makes no representation, covenant or warranty whatsoever, express or implied, regarding the City Property, including, without limitation, the City Property's compliance with the requirements of any law, rule, specification or contract pertaining thereto; the applicable zoning requirements; the propriety of any proposed uses or the continuation of uses thereof, former or present; the title thereto and the condition thereof; the legal description of the City Property and the boundary lines; or the physical or sub-surface condition thereof. The Board agrees that it shall not rely on any information or reports provided by the City

regarding the conditions of the City Property and that the Board is solely responsible for conducting its own tests, surveys, studies and inspections in order to satisfy itself as to the condition of the City Property. The Board acknowledges that it is purchasing the City Property “AS IS” “WHERE IS” AND “WITH ALL FAULTS.”

8. Condition of School District Property. The Board makes no representation, covenant or warranty whatsoever, express or implied, regarding the School District Property, including, without limitation, the School District Property’s compliance with the requirements of any law, rule, specification or contract pertaining thereto; the applicable zoning requirements; the propriety of any proposed uses or the continuation of uses thereof, former or present; the title thereto and the condition thereof; the legal description of the School District Property and the boundary lines; or the physical or sub-surface condition thereof. The City agrees that it shall not rely on any information or reports provided by the Board regarding the conditions of the School District Property and that the City is solely responsible for conducting its own tests, surveys, studies and inspections in order to satisfy itself as to the condition of the School District Property. The City acknowledges that it is purchasing the School District Property “AS IS” “WHERE IS” AND “WITH ALL FAULTS”.

9. Exchange of Information Regarding Properties. Within ten (10) days following the date of this Agreement, the Board shall deliver to the City, at no cost to the City, such of the following as are in the possession of the Board related to the School District Property, and the City shall deliver to the Board, at no cost to the Board, such of the following as are in the possession of the City related to the City Property: surveys, contracts, appraisals, leases, title policies, waste disposal records, permit records, traffic studies, engineering tests and studies, and environmental reports (including without limitation documents relating to soils, ground water, underground tanks, subsurface conditions, correspondence from or with governmental authorities relating to environmental matters, asbestos, hazardous substances, environmental conditions, and other information concerning the environmental condition on or about the Properties).

10. Encumbrances to Property. The parties will not directly or indirectly sell, lease, transfer or convey their Properties or any portion thereof; grant any rights, easements, covenants, mortgages, encumbrances or liens with respect to their Properties; or enter into any agreements which would materially and adversely affect their Properties or the title thereto without first obtaining the other party's consent with respect thereto, which consent will not be unreasonably withheld.

11. Survey and Legal Description/Lot Split. The Board shall secure at its expense any necessary survey, legal description and lot split approvals for the conveyance of the School District Property, and the City shall secure at its expense any necessary survey, legal description and lot split approvals for the conveyance of the City Property.

12. Service Contracts. Each contract, agreement or commitment which affects or relates to the Properties and their operation, including service contracts, supply contracts, management contracts and maintenance contracts (collectively, "Service Contracts") shall be terminated not later than the date of Closing except for such Service Contracts that a party agrees to assume in writing.

13. Personal Property. The Board reserves the right to remove from the School District Property, and thereby not include in the conveyance thereof, any and all moveable equipment and other personalty. If the Board fails to remove any such personal property prior to the Closing, those items remaining on the School District Property shall be included as part of the School District Property conveyed to the City, with the Board waiving any right to thereafter remove those items from the School District Property and the City agreeing to accept them.

14. Utilities and Taxes. Inasmuch as the Properties are presently exempt from taxation, there will be no proration of real estate taxes. Installments of special assessments, if any, which are a lien against the Properties on the date of Closing shall be prorated as of such date on the basis of a 360-day year and the amounts shown on the then latest available County Auditor's tax duplicate. All utility costs accrued with respect to the Properties as of the date of Closing shall be paid by the party owning such property prior to such conveyance.

15. Closing. The closing for the exchange of the Properties (the “Closing”) shall be completed not later than September 30, 2021. Except with respect to costs for which a party is specifically responsible under this Agreement, the Board shall be responsible for the Closing costs, costs of recording the deed, title policy and costs of the Title Company for its acquisition of the City Property, and the City shall be responsible for the Closing costs, costs of recording the deeds, title policy and costs of the Title Company for its acquisition of the School District Property.

16. Deliveries at Closing.

A. At Closing, the Board shall deliver the following documents and instruments: (1) a duly signed quitclaim deed conveying the School District Property to the City; (2) written verification of the Board’s authority to enter into the Agreement and to Close and consummate the transaction contemplated by this Agreement; and (3) such items and documents as may be necessary for the Title Company to complete the Closing.

B. At Closing, the City shall deliver the following documents and instruments: (1) a duly signed quit claim deed conveying the City Property to the Board; (2) written verification of the City’s authority to enter into the Agreement and to Close and consummate the transaction contemplated by this Agreement; and (3) such items and documents as may be necessary for the Title Company to complete the Closing.

17. Notices. Notices required or permitted hereunder shall be in writing and shall be deemed to have been given from the time of receipt by the addressee if delivered in person or sent by facsimile or courier or as of the third business day after deposit in the United States mail, postage prepaid for registered or certified mail. Notices shall be directed to the Board and the City at the following addresses:

To the Board: Oberlin City School District
153 North Main Street
Oberlin, Ohio 44074
Attention: Dr. David Hall, Superintendent

With a copy to: Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, Ohio 43215
Attention: Matthew L. Sagone, Esq.

To the City: The City of Oberlin, Ohio
69 South Main Street
Oberlin, Ohio 44074
Attention: Rob Hillard, City Manager

With a copy to: The City of Oberlin, Ohio
85 South Main Street
Oberlin, Ohio 44074
Attention: Jon D. Clark, Law Director

or to the attention of such other person or to such other address or addresses as either party may from time to time designate by notice to the other in the manner herein provided.

18. Entire Agreement. All understandings and agreements made heretofore between the Board and the City are merged into this Agreement, including the Exhibits hereto, which fully and completely expresses the agreement between the parties and the same is entered into after full investigation, neither party relying upon any statement, representation, agreement or understanding, oral or written, not set forth in this Agreement or an addendum hereto signed by the parties.

19. Benefit. This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, personal and legal representative and assigns.

20. Law. This Agreement shall be governed by the laws of the State of Ohio.

21. Default.

A. If the Board fails to proceed to Closing for any reason, except the City's default, the City shall have the right to terminate this Agreement by notifying the Board of

such termination and to pursue additional remedies at law or equity that may be available to the City.

B. If the City fails to proceed to Closing for any reason, except the Board's default, the Board shall have the right to terminate this Agreement by notifying the City of such termination and to pursue additional remedies at law or equity that may be available to the Board.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties on the date hereinabove set forth have signed this Agreement.

**BOARD OF EDUCATION OF THE
OBERLIN CITY SCHOOL DISTRICT**

CITY OF OBERLIN, OHIO

By: _____
Jason Williams, President

By: _____
Rob Hillard, City Manager

By: _____
Robert Rinchart, Treasurer

Approved as to Form:

Dated: _____, 2021

Jon D. Clark, Law Director

EXHIBIT A

School District Property

[TO BE PROVIDED]

EXHIBIT B

The City Property

[TO BE PROVIDED]

