

ORDINANCE NO. 10-2017

AN ORDINANCE BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, TO AUTHORIZE THE MAYOR OF THE CITY OF NEW PHILADELPHIA TO ENTER INTO A PURCHASE AGREEMENT PURSUANT TO OHIO REVISED CODE 721.28 FOR THE ACQUISITION OF REAL ESTATE FOR THE EXPRESS PURPOSES OF URBAN DEVELOPMENT FOR ADDITIONAL CITY OWNED CEMETERY PLOTS AS AN ADDITION TO THE EXISTING EAST AVENUE CEMETERY, AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of New Philadelphia desires to obtain real estate for the express purposes of urban development for additional City owned cemetery plots as an addition to the existing East Avenue cemetery; and

WHEREAS, the real estate is now available for said purposes and a real estate purchase agreement is attached hereto; and

WHEREAS, said agreement is permissible pursuant to ORC 721.28.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, AS FOLLOWS:

SECTION 1. The Mayor of the City of New Philadelphia, Ohio is hereby authorized to sign and enter into the attached real estate purchase agreement with NPCW, LLC pursuant to Ohio Revised Code 721.28 for the acquisition of real estate for the express purposes of urban development for additional city owned cemetery plots as an addition to the existing East Avenue Cemetery.

SECTION 2. This Ordinance is hereby declared to be an emergency measure and its immediate passage is necessary in order to preserve, protect and maintain the health, safety and welfare of the citizens of the City of New Philadelphia, Ohio.

SECTION 3. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____, 2017

ATTEST:

SAM R. HITCHCOCK
PRESIDENT OF COUNCIL

JULIE COURTRIGHT
CLERK OF COUNCIL

APPROVED:

MAYOR JOEL B. DAY

SPONSORED BY: PARKS AND CEMETERY COMMITTEE

REAL ESTATE PURCHASE AGREEMENT

This Purchase Agreement (the "Agreement") is executed on the ____ day of _____ 2017 (the "Effective Date"), between NPCW, LLC, an Ohio limited liability corporation (hereinafter referred to as "NPCW"), and The City of New Philadelphia, an Ohio municipal corporation (hereinafter referred to as "City"), hereinafter NPCW and City may be collectively referred to as "Parties" or collectively in their individual capacities as a "Party".

In consideration of the mutual obligations herein contained and of the benefits to be derived herefrom, receipt, sufficiency, and adequacy whereof is hereby severally acknowledged, accepted, and agreed to, NPCW and City hereby agree as follows:

1. **Property.** NPCW agrees to sell and convey, and City agrees to purchase, on the terms and conditions contained in this Agreement, the following:

1.1 The parcels of land being approximately 8.95 acres, assigned tax parcel nos. 25-01174-000; 25-01175-000; 25-01176-000; and 25-01177-000, and being situated in the Township of Goshen, County of Tuscarawas, State of Ohio (the "NPCW Land");

1.2 All mineral rights owned by the NPCW and any structure(s) situated on the NPCW Land, all electrical equipment and systems and other fixtures in the structure(s), and all landscaping and other improvements on the NPCW Land (the "NPCW Improvements," the NPCW Land and the NPCW Improvements, collectively, the "NPCW Real Property"); and

1.3 All right, title and interest of NPCW in and to easements, rights-of-way, air rights, rights of ingress or egress, and all other rights, privileges and appurtenances owned by NPCW and in any way related to, or used in connection with, the NPCW Real Property and/or the Personal Property (collectively, the "NPCW Rights").

The Real Property and the Rights are collectively referred to in this Agreement as the "NPCW Property."

2. **Purchase Price/Consideration.** The purchase price for the NPCW Property is **ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 CENTS (\$150,000.00)** ("Purchase Price"), payable as follows:

2.1 \$0.00 (the "Deposit") shall be paid by City to Escrow Agent (defined below) upon NPCW's execution of this Agreement, to be applied to the Purchase Price on the Closing Date; and

2.2 \$150,000.00 shall be paid by City, by wire transfer, to the Escrow Agent on or before the Closing Date (defined below).

2.3 In addition to the Purchase Price, City agrees to convey to NPCW the parcel of land being approximately 33.06 acres, assigned tax parcel no. 25-02067-000, and being situated in the Township of Goshen, County of Tuscarawas, State of Ohio (the "City Land"). City shall also convey to NPCW all mineral rights owned by the City and any structure(s) situated on the City Land, all electrical equipment and systems and other fixtures in the structure(s), and all

landscaping and other improvements on the City Land (the "City Improvements," the City Land and the City Improvements, collectively, the "City Real Property") and all right, title and interest of City in and to easements, rights-of-way, air rights, rights of ingress or egress, and all other rights, privileges and appurtenances owned by City and in any way related to, or used in connection with, the City Real Property and/or the Personal Property (collectively, the "City Rights").

3. **Deposit.** The Deposit, if any, shall be held by Escrow Agent, without interest, to be applied to the Purchase Price on the Closing Date or to be refunded to NPCW if the closing does not occur because of City's default or because any condition of this Agreement is not satisfied or waived. If NPCW fails or refuses to perform NPCW's obligations under this Agreement, the Deposit will be delivered to City by Escrow Agent.
4. **Escrow.** The escrow agent used to close this transaction will be Alban Title, LLC. ("Escrow Agent"), 204 2nd Street NE, New Philadelphia, Ohio 44663. The Escrow Agent shall also perform the legal work described herein. Escrow Agent will also perform the title work described herein (also referred to herein as the "Title Company").
5. **Condition of Property.** NPCW and City mutually acknowledges and understands that the respective Property is being purchased/received and will be conveyed "**AS IS, WHERE IS, AND WITH ALL FAULTS,**" whether patent or latent, as of the Closing Date. The Parties mutually acknowledge that the other Party has made no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to either Party, except as specifically set forth in this Agreement.
6. **Conditions Precedent.** Both Parties' obligation to close the transaction contemplated herein is conditioned upon their mutual compliance with and satisfaction of all of their respective obligations set forth in this Agreement, as determined by the other Party, including, but not limited to satisfaction of the following condition precedent:
 - 6.1 Title Company successfully obtaining approval from the appropriate county agencies to transfer the respective Real Property using the current legal descriptions.
7. **Title.** Within fifteen (15) days after the date of this Agreement, the Parties shall provide to the other Party a commitment for an Owner's Policy of Title Insurance (the "Commitment") issued by Title Company and dated as of a current date, pursuant to which the Title Company shall commit to issue to Buyer an ALTA Owner's Policy of title insurance, in the amount of the Purchase Price, insuring in the respective Party fee simple marketable title to the Real Property determined in accordance with the Title Standards adopted by the Ohio State Bar Association, subject to the following "Permitted Exceptions":
 - 7.1 All legal highways;
 - 7.2 Zoning, building and other laws, ordinances, codes and regulations;

7.3 Easements, rights-of-way, conditions, covenants and restrictions and all other matters of record; and

7.4 Real estate taxes that are a lien on the Real Property, but not yet due and payable.

8. **Closing.** Unless extended by agreement of the Parties, closing shall occur on or before 45 days after the execution of this Agreement ("Closing Date"). On or before the Closing Date, City and NPCW shall make the deliveries set forth below in Section 10 to the Escrow Agent, and upon satisfaction of these deliveries and any conditions or contingencies herein the Escrow Agent shall deliver the appropriate documents and record the limited warranty deed transferring fee simple title in and to the Property to the. Notwithstanding anything herein to the contrary, closing shall be deemed to have occurred as of the date of recordation of the limited warranty deed described in Section 10.1.1 below, in the County Recorder's Office in which the Property is situated ("Closing").

9. **Possession.** Exclusive possession of the Property shall be delivered to each Party of their respective Real Property on the Closing Date.

10. **Closing Deliveries.** On or before the Closing Date, each Party shall make the following deliveries to the Escrow Agent to effectuate the transaction contemplated herein:

10.1 **City's Deliveries in Escrow.** City shall deliver the following items to the Escrow Agent on or before the Closing Date:

10.1.1 A warranty deed fully executed and acknowledged by City, conveying fee simple title to the City Property to NPCW, LLC, an Ohio limited liability corporation, free and clear of all liens, rights to take liens, and encumbrances, except the Permitted Exceptions.

10.1.2 An owner's affidavit as to mechanics' liens, persons in possession of the Real Property, unrecorded agreements, and such other matters as required by the Title Company as a condition to its deletion of the standard exceptions relating to such matters from the Title Policy.

10.1.3 The Purchase Price less any prorations and adjustments set forth herein.

10.2 **NPCW's Deliveries.** NPCW shall deliver the following items to the Escrow Agent on or before the Closing Date:

10.2.1 A warranty deed fully executed and acknowledged by NPCW, conveying fee simple title to the NPCW Property to City of New Philadelphia, free and clear of all liens, rights to take liens, and encumbrances, except the Permitted Exceptions.

10.2.2 An owner's affidavit as to mechanics' liens, persons in possession of the Real Property, unrecorded agreements, and such other matters as required by the Title Company as a condition to its deletion of the standard exceptions relating to such matters from the Title Policy.

10.3 **Closing Statements/Escrow Fees.** On the Closing Date, the Parties shall execute closing statements consistent with this Agreement in the form required by the Escrow Agent. The Parties shall apportion, adjust, prorate, and credit those expenses, costs, liabilities and related items and monies due between themselves at, and as of, the Closing Date in accordance with the terms of Section 10.

10.4 **Prorations and Expenses.** The real property taxes and assessments with respect to the respective Real Property shall be prorated between the Parties as of the Closing Date in accordance with the custom in the county in which the respective Real Property is situated. Utility costs, and any other income or expenses associated with the respective Real Property shall be prorated on a per diem basis as of the Closing Date.

10.5 **NPCW's Expenses.** NPCW shall pay for the following expenses relative to the transaction:

10.5.1 All costs necessary to obtain a title commitment for a title insurance policy including, but not limited to abstracting and search costs for the NPCW Real Property.

10.5.2 One-half (1/2) of the cost of the owner's title policy for the NPCW and City Real Property.

10.5.3 One-half (1/2) of the closing fees of the Escrow Agent.

10.5.4 Ohio and County transfer taxes, conveyance fees and revenue stamps to be attached to or charge against the deed for the NPCW Real Property.

10.6 **City's Expenses.** City shall pay for the following expenses relative to this transaction:

10.6.1 All costs necessary to obtain a title commitment for a title insurance policy including, but not limited to abstracting and search costs for the City Real Property.

10.6.2 One-half (1/2) of the cost of the owner's title policy for the City and NPCW Real Property.

10.6.3 One-half (1/2) of the closing fees of the Escrow Agent.

10.6.4 Ohio and County transfer taxes, conveyance fees and revenue stamps to be attached to or charge against the deed for the City Real Property, if any.

10.6.5 All legal fees for preparation of the deed for the NPCW Real Property and the City Real Property.

10.6.6 Cost of filing and recording the warranty deed conveying title to the NPCW Real Property and the City Real Property.

11. **Brokers.** Each party represents to the other that there is no broker or other person entitled to a commission or similar fee in connection with this transaction. Each Party agrees to

defend, indemnify and save harmless the other party against any and all other claims for brokerage commissions or similar fees for any services rendered at that Party's request in connection with this transaction.

12. **Notices.** All notices, demands or other communications given under this Agreement shall be in writing and shall be either hand delivered or mailed certified, postage prepaid to the parties at the addresses in the opening paragraph of this Agreement.

13. **Parties Representations, Warranties and Covenants.** The Parties represent, warrant and covenant to each other as to the following matters, and shall be deemed to remake all of the following representations, warranties and covenants as of the date of Closing:

13.1 Each Party will execute any and all documents in issuance prior to, at and after Closing that are necessary to carry out the transfer contemplated by this Agreement;

14. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile and/or email, and such facsimile or email will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party.

16. **Entire Agreement; Amendment.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and shall supersede all other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement.

17. **Section Headings.** The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part thereof or affect the meaning or interpretation of this Agreement or of any term or provision hereof. The representations and warranties of each Party hereunder shall survive closing and recording of the deed.

18. **Time is of the Essence.** **TIME IS OF THE ESSENCE FOR ALL PURPOSES OF THIS AGREEMENT.**

19. **Law; Venue.** This Agreement shall be governed by the laws of the State of Ohio. Any dispute or controversy hereunder shall be heard in the local courts of Tuscarawas County, Ohio.

The Parties hereto have executed the Agreement as of the Effective Date first set forth above.

CITY OF NEW PHILADELPHIA:

NPCW, LLC:

JOEL DAY, MAYOR

KEVIN WALLICK, MEMBER