

**ORDINANCE NO. 85-23**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT TO PURCHASE REAL ESTATE LOCATED OFF OF FRENCH CREEK ROAD (REAR LOT) IN THE CITY OF AVON PERMANENT PARCEL NO. 04-00-010-113-071 FROM RANDALL B. FRATIANNE AND GARY C. FRATIANNE AND DECLARING AN EMERGENCY**

**WHEREAS**, because the City continues to grow so does its need to acquire additional lands for public use; and

**WHEREAS**, the Mayor seeks authorization from Council to enter into a Purchase Agreement with Randall B. Fratianne and Gary C. Fratianne for the purchase of a parcel of land, approximately 5.26 acres located off of French Creek Road (rear lot adjacent to MetroParks property) in the City of Avon; and

**WHEREAS**, Council has had an opportunity to meet with the Mayor and discuss the purchase of the subject properties, including the terms of the transaction as set forth in the proposed Purchase Agreement; and

**WHEREAS**, Council deems it to be in the best interests of the health, safety and welfare of the community that the City acquire the land being offered for sale off of French Creek Road for use as public property and authorize the Mayor to execute a purchase agreement to further said acquisition.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:**

Section 1 - That the Mayor is hereby authorized to enter into a Purchase Agreement with Randall B. Fratianne and Gary C. Fratianne to acquire a parcel of land located off of French Creek Road (rear lot adjacent to MetroParks property) in the City of Avon, Permanent Parcel No. 04-00-010-113-071 (5.26 acres). Said Agreement, in substantially the form as will be finalized, is attached hereto as Exhibit A and incorporated herein by reference.

Section 2 - Council hereby authorizes the payment of funds from the General Fund No. 101 in an amount equal to that set forth in the Purchase Agreement, together with any costs of closing. Payment is to be made pursuant to the directives of the Finance Director who is authorized to increase the appropriation by a reasonable amount to cover any engineering, legal and closing fees associated with this purchase.

Section 3 - That it is found and determined that all formal actions of the Council of the City of Avon concerning and relating to the adoption of this Ordinance were taken in an open meeting of the Council of the City of Avon and that all deliberations of this City's Council and any of its committees that resulted in those formal actions were in meetings open to the public, or otherwise 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 immediately necessary for the preservation of the public health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity for the City to acquire additional land for public use; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: June 26, 2023 DATE SIGNED: June 26, 2023

By: Brian Fischer  
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: June 27, 2023

[Signature]  
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior  
John A. Gasior, Law Director

ATTEST:

Barbara Brooks  
Barbara Brooks, Clerk of Council

Posted: June 28, 2023  
Electronically and at City Hall as  
Provided by Council

Prepared By:

John A. Gasior, Esq.  
Law Director, City of Avon

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 85-23, passed by the Council of said City on June 26, 2023.

IN WITNESS WHEREOF, I have on this 27th day of June, 2023, affixed my signature and official seal.

Barbara J. Brooks  
Barbara J. Brooks, Clerk of the Council  
of the City of Avon, Ohio

**PURCHASE AGREEMENT**  
**(Real Estate)**

This PURCHASE AGREEMENT (the 'Agreement') is made at Avon, Ohio, by and between, **RANDALL B. FRATIANNE**, 3250 Bramblewood Way, Avon, Ohio 44011 and **GARY C. FRATIANNE**, 1080 Bassett Road, Unit D, Westlake, Ohio 44145, hereafter the "Sellers" and **THE CITY OF AVON, OHIO**, an Ohio municipal corporation, herein referred to as the "Buyer" (all of whom are being collectively herein referred to as the "Parties"), upon the following terms, provisions and conditions:

**1. DESCRIPTION OF PROPERTY**

Sellers agree to sell and convey to the Buyer and the Buyer agrees to purchase from Sellers at the price and upon all the terms, provisions and conditions herein contained, real property located off of French Creek Road (rear lot), and consisting of one (1) vacant unimproved parcel of real estate, situated in the City of Avon, identified as PPN: 04-00-010-113-071 (containing approximately 5.26 acres), as shown on "Exhibit A" attached hereto and incorporated herein. The sale and purchase shall include all rights, privileges and easements, if any, pertaining to said property. The legal description for the real property being sold and purchased is included in Exhibit B (PPN: 04-00-010-113-071) containing approximately 5.26 acres which is attached hereto and incorporated herein.

**2. PRICE and TERMS OF PAYMENT**

The total purchase is a cash price to be paid by the Buyer to the Seller for the property described in Paragraph 1 above shall be the sum of **TWO HUNDRED FIVE THOUSAND DOLLARS (\$205,000.00)**, payable to Haverfield Title Agency, Inc., 21851 Center Ridge Road, Suite 303, Rocky River, Ohio 44116 (440-356-1650) Attn: John M. McDermott, as escrow agent for the Parties, prior to or upon the date designated herein for closing.

**3. CONDITIONS PRECEDENT**

This Agreement and the obligation of the Buyer to complete and close this Agreement is subject to the satisfaction of the following conditions precedent prior to the closing date:

- a) passage of an ordinance by Avon City Council authorizing the purchase of the property described in Paragraph 1 above at the price and upon all of the terms, provisions and conditions set forth in this Agreement.
- b) receipt by the Buyer of such municipal approvals from the City of Avon as may be required for the Buyer's intended use of the property, and
- c) receipt of a title commitment for the property acceptable to the Buyer. It shall be the Buyer's obligation to order a title commitment.

In the event any of the conditions precedent set forth in (a) through (c) above are not satisfied prior to the closing date, the Buyer may, upon written notice to the Seller, terminate this Agreement and upon such termination the Parties shall be mutually released from any further obligations of performance under the terms of this Agreement and the escrow agent shall return any earnest money deposited to the Buyer.

**4. DEPOSIT OF FUNDS AND DOCUMENTS/APPOINTMENT OF ESCROW AGENT**

All funds and documents necessary to complete this transaction shall be deposited into escrow within three (3) days prior to closing with Haverfield Title Agency, Inc., hereafter referred to as "Haverfield Title", who shall serve as escrow agent for this transaction. The escrow agent shall serve subject to its standard conditions of acceptance of escrow.

**5. TITLE EXAMINATION**

The Buyer shall order a title examination of the real property described in paragraph 1 of this Agreement through Haverfield Title. Haverfield Title shall, within 10 days of receipt of the order, prepare and furnish to the Buyer and the Seller its written Title Commitment showing the results of its title examination of the property.

In the event the Buyer objects to any defects appearing in the title commitment as a result of the title examination, the Buyer shall notify the Seller and Network Title of any such objections and the Seller shall have 60 days to cure any defects in title to the satisfaction of the Buyer. In the event the Seller fails or refuses to cure any defects in title objected to by the Buyer, the Buyer may, at its option, either: (a) accept title to the property subject to the defects which will be deemed as a waiver of the objections to title made by the Buyer, or (b) terminate this Agreement upon written notice to the Seller, and, upon such termination, the Parties shall be mutually released from any further obligations of performance under this Agreement and the escrow agent shall return any earnest money deposited to the Buyer.

#### **6. EVIDENCE OF TITLE**

At closing, Seller shall deposit a General Warranty deed with release of dower into escrow conveying to the Buyer a good and marketable title with general warranty covenants and subject to zoning ordinances, easements, if any, restrictions and conditions of record and taxes and assessments for the current half of the taxable year and thereafter.

#### **7. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to the Buyer as follows:

- a) that they are the fee simple owners of the property described in Exhibits A & B and that there are no leases affecting the property or tenants in possession of the property,
- b) that they have not received notice of any pending or threatened condemnation proceedings or proposed taking of part of all of the property by any governmental authority,
- c) that, to the best of their knowledge, they have not received notice from any governmental authority that they are in violation of any laws, ordinances, statutes, rules or regulations pertaining to the property or any part thereof,
- d) that they have not been notified of and, to the best of their knowledge, the property does not contain any underground storage tanks, asbestos, environmental contamination or other environmentally hazardous waste which would require remediation under Federal and/or State laws, and

- e) that, to the best of their knowledge, there are no legal actions or proceedings which would inhibit the delay or closing of this transaction in accordance with the terms and provisions of this Agreement.

**8. TITLE INSURANCE**

At closing, Haverfield Title, as agent for First American Title Insurance Company, shall issue to the Buyer an Owner's Fee policy of title insurance in the full amount of the purchase price as evidence that the Buyer has received good and marketable title to the property free and clear of all liens and encumbrances whatsoever except zoning ordinances, easements, if any, restrictions and conditions of record and taxes and assessments, both general and special, for the current half of the taxable year and thereafter.

**9. CLOSING COSTS**

At closing, the escrow agent shall prorate all real estate taxes and assessments between the Parties as of the date of closing based on the figures appearing on the latest available tax duplicate which shall be reflected on the HUD-1 Settlement Statement to be prepared by the escrow agent. The HUD-1 Settlement Statement shall also reflect a summary of the costs to the Parties for closing this transaction, for which the City shall assume full responsibility.

**10. CLOSING DATE**

The closing date shall occur within 72 hours of the time the Buyer notifies the escrow agent that all of the conditions precedent stated above have been satisfied and provided that the escrow agent is in receipt of all funds and documents required to close this transaction. In no event shall the closing take place later than August 18<sup>th</sup>, 2023 unless the Closing Date is extended by mutual agreement of the parties. If closing does not occur on or before that date, either party may terminate this agreement. At closing, the escrow agent shall record the warranty deed transferring title to the property to the Buyer with the Lorain County Recorder.

11. DEFAULT

In the event either party defaults in the performance of its obligations under this Agreement and this transaction fails to close, the non-defaulting party shall have all rights and remedies at law or in equity to proceed against the defaulting party for specific performance of this Agreement and damages resulting from the breach of this Agreement by the defaulting party.

12. GOVERNING LAW

This Agreement and all of its terms and provision shall be construed in accordance with and governed by the applicable laws of the State of Ohio.

13. BINDING EFFECT

This Agreement and all of its terms and provisions shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

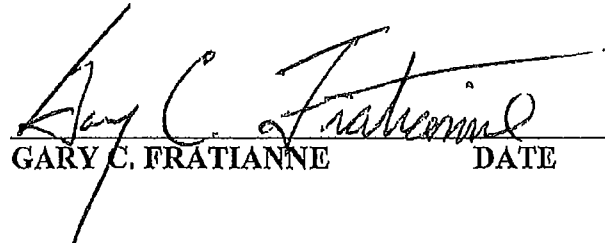
IN WITNESS WHEREOF, the Sellers and Buyer have signed this Agreement on the dates set forth below.

In the presence of:

SELLERS:

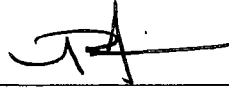
  
\_\_\_\_\_  
RANDALL B. FRATIANNE                      DATE    6/15/23

And

  
\_\_\_\_\_  
GARY C. FRATIANNE                      DATE    6/15/23

(Continued on Next Page)

BUYER: THE CITY OF AVON



BRYAN K. JENSEN, MAYOR

6/27/23

DATE

Instrument Prepared by:  
John A. Gasior  
36815 Detroit Road  
Avon, Ohio 44011  
(440) 934-7676  
[jgasior@ssgavonlaw.com](mailto:jgasior@ssgavonlaw.com)