

ORDINANCE NO. 81 -03

By: Jeffrey McClelland

An Ordinance to approve the execution and delivery of, a contract on behalf of the City for the sale by competitive bid of the City owned property (also known as Bexley Tree Nursery) with the successful bidder, L. Rider Brice Architect and Builders, at the accepted bid price of \$613,000.00, and subject to the requirements of the terms and conditions set forth in the bid information.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the contract for the sale by competitive bid of the City owned property (also known as Bexley Tree Nursery), substantially in the form attached to this Ordinance as Exhibit A, is hereby approved and that the execution of the contract by the Mayor and Auditor is hereby authorized by and on behalf of the City.

Section 2. That this Ordinance shall go into force and effect from and after the earliest period allowed by law.

Passed: Dec 9, 2003

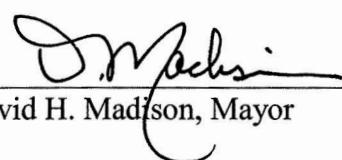


President of Council

Attest: Jeffrey McClelland
Clerk of Council

11/11/03 First Reading
11/25/03 Second Reading
12/09/03 Third Reading
Passed
Contract language was
amended as noted on 12/09/03.

Approved: 12/19, 2003



David H. Madison, Mayor

PURCHASE AGREEMENT

18th THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of the December, 2003 between THE CITY OF BEXLEY, an Ohio municipal corporation ("Seller") and RIDER BRICE ARCHITECT AND BUILDERS, an Ohio sole proprietorship ("Buyer").

1. The Property. Seller hereby agrees to sell, convey and assign to Buyer, and Buyer hereby agrees to purchase, assume and accept from Seller, for the Purchase Price (as hereinafter defined) and on and subject to the terms and conditions herein set forth, the following (collectively, the "Property"): (a) the real property commonly known as the Bexley Tree Nursery and described as the 2.444+- acre tract of land consisting of the unimproved Parkview Extension and extending from N. Parkview Avenue at Caroline Avenue north to the railroad right-of-way and from Alum Creek on the west to 2364 Caroline Avenue on the east, all in the City of Bexley, Ohio, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), together with (b) all rights, privileges, easements and appurtenances belonging to any of the foregoing.

2. Bid Packet. Buyer was selected by the Bexley City Council as the successful bidder to proceed to obtain approvals for the purchase and development of the Property. The award by Bexley City Council was made subject to Buyer's compliance with the terms and conditions of the Bid Information packet submitted with Amended Ordinance 33-03, and attached hereto as Exhibit B and made a part hereof (the "Bid Packet"). The Seller sought prospective purchasers by bid, and after advertising the sale, bids were received and opened on August 29, 2003. All terms and conditions of the sale of the Property shall be in compliance with the Bid Packet, unless expressly amended herein. In the event of any inconsistency between the Bid Packet and this Agreement, this Agreement shall control. For all purposes under this Agreement, any reference in the Bid Packet to the "Bid Award Date" or any other time period based upon the date that the successful bid is awarded by the City, shall mean the date of effectiveness of the ordinance passed by Bexley City Council authorizing the execution and delivery of this Agreement, and such date shall be referred to herein as the "Effective Date." Therefore, all due diligence and approval periods shall run from the Effective Date, as defined herein, and not from the Bid Award Date.

3. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be SIX HUNDRED THIRTEEN THOUSAND AND NO/100 DOLLARS (\$613,000.00), payable at closing in cash, by cashier's or certified check or by wire transfer, subject to such offsets and credits as described herein. Seller and Buyer acknowledge that on October 31, 2003, Buyer deposited \$30,650.00 (the "Earnest Money") with Seller. The Seller is authorized to hold the deposit as provided for in Section 1 of the Terms and Conditions section of the Bid Packet.

4. Inspection by Buyer; Approvals. All inspections and evaluations of the Property, including physical inspections and title condition, and all required approvals shall be conducted and obtained as provided in the Bid Packet. A current boundary survey, dated July

11, 2003 by Myers Surveying was included with the Bid Packet. If Buyer wishes to obtain a different survey, Buyer shall pay the cost thereof. Buyer shall have the right to terminate this Agreement and its obligations and rights hereunder for any reason prior to the expiration of the Due Diligence Period, as defined in the Bid Packet, or upon the failure of the Buyer to obtain the required approvals within the time set forth in the Bid Packet. If Buyer elects to terminate this Agreement for the failure of the conditions set forth in the Bid Packet, then the Earnest Money shall be returned as provided therein.

All requirements for development of the Property shall be met as provided for in the Bid Packet, including without limitation the receipt of all board and commission and City Council approvals that are required and the time frames for completion of development.

5. Condition of the Property. Seller has not made, does not make and specifically negates and disclaims any representations, warranties or guaranties of any kind whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to the condition of the Property, it being the intent that the Property is being sold on an "AS-IS" basis. Buyer submitted its bid with the understanding, acknowledgement and agreement of the City's position in this regard and Buyer shall rely solely on its inspections and reviews of the Property during the Due Diligence Period.

6. Closing. The Closing will occur in accordance with the time periods set forth in the Bid Packet. At Buyer's option, the closing will occur at the title company issuing title insurance for the Property, or at the City administrative offices, or such other address as Buyer and Seller agree.

7. Expenses. Buyer shall be responsible for the payment of all costs associated with Buyer's purchase of the Property, including without limitation inspection fees, title costs, and recording charges.

8. Conditions Precedent to Buyer's Obligations to Close. Seller and Buyer acknowledge and agree that Buyer's obligations to consummate the transactions contemplated by this Agreement are expressly conditioned upon satisfaction of the conditions contained in the Bid Packet with respect to Buyer's inspection of the Property and the receipt of all required approvals by the City of Bexley for Buyer's proposed development of the Property.

9. Possession. Vacant possession of the Property shall be delivered by Seller to Buyer at the closing, subject, however, to the Seller's right to maintain the Seller's trees and other nursery products and greenhouse operations on the Property as provided in the Bid Packet.

10. Notices. Any notices, demands or other communications required or desired to be given by either party to the other pursuant to this Agreement shall be in writing and shall be either personally delivered, sent by nationally recognized overnight courier, sent by facsimile, or mailed through the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following addresses:

If to Seller, to:

The City of Bexley Development Office
2242 East Main Street
Bexley, Ohio 43209
Attn: Daniel J. Lorek
Planning and Economic Development Director
Phone: (614) 235-8694
Fax: (614) 235-3420
Email: Dlorek@Bexley.org

With a copy to:

Baker & Hostetler LLP
65 East State Street, Suite 2100
Columbus, Ohio 43215
Attn: Michael E. Minister, Esq.
Phone: (614) 462-4711
Fax: (614) 462-2616
Email: mminister@bakerlaw.com

If to Buyer, to:

Rider Brice Architect and Builders
2074 Arlington Avenue
Columbus, Ohio 43221
Attn: L. Rider Brice
Phone: (614) 486-4100
Fax: (614) 486-2900
Email: riderbricearch@aol.com

With a copy to:

Donald T. Plank, Esq.
Shuler Plank & Brahm
145 East Rich Street
Columbus, Ohio 43215
Phone: (614) 228-4546
Fax: (614) 228-1472
Email: dplank@spb-law.com

or such other address as any entity named above designates to the others in writing as aforesaid. Any notice given in a manner set forth above shall be deemed received as follows: (a) if personally delivered, the notice shall be deemed received on the date delivered, (b) if sent by nationally recognized overnight courier, the notice shall be deemed received on the first business day following the business day it is sent, (c) if sent by facsimile, upon the sender's receipt of written telecopy confirmation and (d) if mailed through the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, the notice shall be deemed received upon execution of the return receipt.

11. Brokers. Seller and Buyer each hereby represents and warrants to the other that it has not dealt with any broker or finder in connection with the transaction contemplated hereby. Seller and Buyer each hereby agree to indemnify the other for any and all loss, cost, expense and liability (including attorneys' fees) incurred by reason of a claim for brokerage commission or finder's fee by any person or entity claiming to have been engaged by it. Notwithstanding anything in this Agreement to the contrary, this provision shall survive any termination of this Agreement.

12. Survival of Agreement. Unless expressly stated otherwise in this Agreement, the terms, conditions, and obligations of this Agreement shall survive the closing.

13. Entire Agreement. This Agreement and all attachments hereto, including the Bid Packet, embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous understandings, representations and statements, oral or written, are merged into this Agreement.

14. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto. This Agreement may not be assigned; provided, however, that nothing herein shall be construed to prevent Buyer from assigning its rights to ownership of the Property or to the right to develop the Property to another entity in which Buyer has at least a 25% ownership interest following the Closing, so long as any such assignee complies with all obligations of the Bid Documents and Seller's boards and commissions and City Council with respect to such development.

15. Further Assurances. The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances (including corporate resolutions) and to take all such further action before or after the Closing as shall be reasonably necessary to fully carry out the purpose and intent of this Agreement and to fully consummate and effect the transactions contemplated hereby.

16. Buyer's Representations. Buyer represents and warrants to Seller that:

(a) it has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder;

(b) this Agreement has been duly executed and delivered by the Buyer, and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof; and

(c) the execution, delivery and performance of this Agreement does not violate or breach the terms of any agreement to which Buyer is a party or by which it or its property may be bound.

17. Governing Law. This Agreement shall be construed under the laws of the State of Ohio.

18. Time of the Essence. Time is of the essence of this Agreement and of each provision hereof.

19. Seller's Authorization. Buyer understands, acknowledges and agrees that the execution and delivery of this Agreement by the Seller is to be made only after the passage and effectiveness of an ordinance by the Bexley City Council approving this Agreement and the execution and delivery hereof by authorized city officials.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the day, month and year first-above written.

SELLER:

THE CITY OF BEXLEY, OHIO

By: 

David H. Madison, Mayor

By: 

Gary W. Qualmann, Auditor

BUYER:

RIDER BRICE ARCHITECT AND BUILDERS

By: 

L. Rider Brice, President

Approved as to form:


Daniel A. Dwyer
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

To be attached.

EXHIBIT B

**COPY OF BID PACKET APPROVED BY CITY COUNCIL
BY AMENDED ORDINANCE 33-03**

[To be attached to final execution copy].