

**CITY OF XENIA, OHIO  
ORDINANCE NUMBER 17 – 37**

**ORDINANCE AUTHORIZING THE CITY MANAGER TO PURCHASE REAL ESTATE PARCEL M36000100220001900 AS IDENTIFIED BY THE GREENE COUNTY, OHIO AUDITOR AT 588 DAYTON-XENIA ROAD FOR THE PRESERVATION OF THE HEALTH, SAFETY AND WELFARE OF THE GENERAL PUBLIC, AND DECLARING IT TO BE AN EMERGENCY**

**WHEREAS**, Jonathon W. and Sarah M. Young own property at 588 Dayton-Xenia Road, which is also identified by Greene County Parcel ID M36000100220001900; and

**WHEREAS**, the City of Xenia is required by state and federal statutes to monitor and report gas emissions at the property lines of its closed landfill; and

**WHEREAS**, the Young property at 588 Dayton-Xenia Road shares the property line with the City of Xenia’s closed landfill; and

**WHEREAS**, in order to preserve the health, safety and welfare to the public, the City of Xenia wishes to acquire the Young property to avoid any potential environmental hazards.

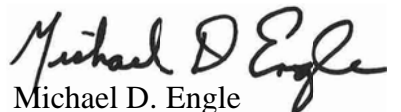
**NOW, THEREFORE**, the City of Xenia hereby ordains:

**Section 1.** The City Manager of the City of Xenia is authorized to execute any and all necessary documents to obtain fee simple ownership of parcel M36000100220001900 from Jonathon W. and Sarah M. Young, at a total cost not to exceed \$535,000.00 and to take all other necessary and reasonable action to obtain title free and clear of any interest of third parties that are not adverse to the interest of the City.

**Section 2.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were taken in meetings open to the public and in conformance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**Section 3.** This Ordinance is declared to be an emergency measure in order to comply with federal and state statutes as soon as possible and shall take effect and be in force from and after the earliest period allowed by law.

Passed: August 24, 2017  
Effective: August 25, 2017

  
Michael D. Engle  
President, Xenia City Council

Attest:  
  
Michelle D. Johnson  
City Clerk

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (the “Agreement”) is made and entered into as of \_\_\_\_\_, 2017, by and between Jonathan W. Young and Sarah M. Young, husband and wife, 588 Dayton Xenia Road, Xenia, OH 45385 (“Seller”), and the City of Xenia, Ohio, an Ohio municipal corporation, 107 N. Main Street, Xenia, OH 45385 (“Buyer”).

### RECITALS

WHEREAS, Buyer wishes to purchase certain property of Seller located at 588 Dayton Xenia Road, Xenia Township, Ohio (Greene County Auditor Parcel ID M36-0001-0022-0-0019-00), containing approximately 5.001 acres, more or less, and all improvements thereon and rights and appurtenances thereto, as generally depicted on attached Exhibit A (the “Property”); and

WHEREAS, Seller wishes to sell the Property to Buyer;

NOW, THEREFORE, in consideration of the mutual agreements herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller agrees to sell to Buyer and Buyer agrees to purchase the Property from Seller, subject to the following terms and conditions:

1. **Purchase Price.** The purchase price (the “Purchase Price”) to be paid to Seller for the sale of the Property to Buyer, as provided for herein, shall be Five Hundred Thirty-Five Thousand Dollars and No Cents (\$535,000.00). At Closing, Buyer shall pay to Seller, by cashier’s check or by wire transfer of current funds, the Purchase Price, subject to adjustment as hereinafter provided and subject to all of the terms and conditions contained herein.
2. **Adjustments.** The following items shall be adjustments to the Purchase Price payable at Closing, unless otherwise so provided:
  - A. General property taxes (state, county, municipal, school and fire district, and other local real estate taxes and personal property taxes) accrued for the year in which the Closing occurs through the date of Closing, and, in addition, if not fully paid prior to Closing, all taxes for years prior to the year in which Closing occurs, shall be charged to Seller as a credit against the Purchase Price;
  - B. Special taxes or assessments, if any, upon the Property levied or which have accrued through the date of Closing shall be charged to Seller as a credit against the Purchase Price;
  - C. On or before the date of Closing, Seller shall cause any and all assessments, liens, previously undisclosed leases or tenancies and encumbrances affecting the Property, including, without limitation, any mechanic’s lien, security interest, mortgage or deed of trust, to be satisfied and released. The proceeds due at Closing shall be applied to satisfy or pay any assessments, liens, encumbrances or other charges affecting the Property, which are to be paid, satisfied or released pursuant to this Agreement.
3. **Contingencies.** This Agreement and the Buyer’s obligations thereunder, is expressly contingent upon satisfaction of the following contingencies (“Contingencies”):
  - A. *Inspections* - Seller shall provide Buyer with access to and copies of any information in Seller’s possession that relates to the Property, including but not limited to copies of any prior surveys of the Property; copies of any prior title examinations or title commitments for the Property; and copies of any environmental and/or engineering studies on the Property. Buyer shall have a period of sixty (60) calendar days (the “Inspection Period”), commencing on the date that this Agreement is executed, within which to physically inspect the Property, cause title to the Property to be examined, have a survey of the Property made, take soil and groundwater samples, perform environmental testing that Buyer determines is necessary and, in general, conduct its due diligence related thereto. During the Inspection Period, Buyer and

Buyer's authorized representatives shall have the right to reasonable access to the Property at reasonable times for the purpose of inspecting the Property and otherwise conducting its due diligence review of the Property. Seller shall not be liable for any damages, liabilities or claims for property damage or personal injury caused by Buyer, its employees, agents and contractors in the conduct of such inspections and investigations other than pre-existing conditions merely discovered by Buyer or its employees, agents or contractors. Seller shall reasonably cooperate with Buyer in facilitating such inspections. Buyer shall have the right to extend the Inspection Period for a period of up to sixty (60) calendar days by providing written notice to Seller prior to the end of the initial Inspection Period. The Inspection Period may be extended thereafter only upon the written agreement of both parties.

- B. *Title Examination* – At its sole expense, Buyer may obtain a title examination and/or commitment for an owner's policy of title insurance in all respects satisfactory to Buyer and, if Buyer so elects, its title insurance company.
  - C. *Tenancy/Occupancy Records and Information* - Seller shall provide to Buyer as soon as reasonably possible upon execution of this Agreement, a copy of any written leases, farm rental agreements or other instruments granting any third party an interest or right to use or occupy the Property. If such an interest exists, but is not in writing, Seller shall confirm this in writing to Seller and provide a list of the names, mailing addresses, telephone numbers, of each third party having such interest or right to use or occupy the Property, plus the terms, conditions and obligations of such interest, or right to use or occupy the Property.
  - B. Any existing leases, tenancies or occupancies or other agreements affecting the Property shall be cancelled and terminated by the Seller on or prior to Closing.
4. **Title Approval.** In the event that the title examination and/or commitment obtained by Buyer pursuant to Section 3.B. hereof discloses matters objectionable to Buyer, the Buyer, in its sole discretion, shall notify Seller, in writing, of such objections prior to the the expiration of the Inspection Period. If Buyer notifies Seller of any such matter, Seller shall have thirty (30) days to correct or resolve such matter to Buyer's satisfaction ("Seller's Cure Period"). The Seller's Cure Period may be extended upon the written agreement of the parties. If the objections are not cured before the expiration of the Seller's Cure Period or any extension thereof, Buyer may, by written notice to the Seller prior to Closing, decline to purchase the property and terminate this Agreement; or waive the unsatisfied objections and close the transaction. In the event Buyer does not notify Seller of any such objections, the easements and other matters of records shall be deemed "Permitted Exceptions." Seller agrees to remove any mortgage or other lien securing the payment of money encumbering the Property at or prior to Closing.
5. **Possession.** Seller shall transfer possession of the Property to Buyer at Closing, subject to the satisfaction of the Contingencies set forth in this Agreement, the provisions of Section 4 of this Agreement, and completion of the Inspection Period as set forth in Section 3 A. of this Agreement, and with no leases, tenancies or occupancies, and with all agreements affecting the Property cancelled and terminated on or prior thereto.
6. **Closing.** The Closing shall be held on a date to be mutually agreed upon by Buyer and Seller but no later than thirty (30) days after completion of the Inspection Period, as long as the Contingencies have been met or expressly waived by Buyer, or at such earlier time as mutually agreed upon between the Seller and the Buyer. The Closing shall take place **at the offices of the Title Company, Homesite Title Agency, Inc. at 1755 West Second Street.** If any of the contingencies provided for herein cannot be satisfied, then Buyer, at its option, may either (i) proceed to immediately close on the purchase of the Property, or (ii) terminate this Agreement whereupon the Parties hereto shall have no further obligations hereunder and Buyer shall give Seller a written release from this Agreement.

7. **Closing Costs.**
- A. Seller shall pay:
- (1) The costs, if any, of curing objections to the status of title and recording any curative title documents, if Seller has elected to cure;
  - (2) The costs of satisfying and releasing any liens or mortgages on the Property;
  - (3) Any transfer tax or conveyance fees;
  - (4) One-half of the fee of the Title Company for acting as closing and/or escrow agent;
  - (5) Seller's attorneys' fees; and
  - (6) Any other expenses incurred by Seller in connection with this transaction.
- B. Buyer shall pay:
- (1) The premium for the title insurance required by Buyer;
  - (2) The costs of Buyer's due diligence investigations;
  - (3) The costs of any environmental site assessment obtained by Buyer,;
  - (4) The costs of any survey required by Buyer;
  - (5) One-half of the fee of the Title Company for acting as closing and/or escrow agent;
  - (6) The costs of recording the deed; and
  - (7) Buyer's attorneys' fees.
8. **Deliveries at Closing.**
- A. At Closing, and upon payment of the Purchase Price, Seller shall execute and deliver:
- (1) A general warranty deed in proper form for recording, duly executed, and acknowledged, so as to convey to Buyer a good and indefeasible title in fee simple to the Property, free and clear of any all liens, encumbrances, conditions, assessments, reservations and restrictions, except for the Permitted Exceptions;
  - (2) An executed Seller's title affidavit or owner's affidavit and such further instruments of conveyance and other documents as may reasonably be required by the Title Company in order to consummate the transactions contemplated herein;
  - (3) An executed IRS form W-9 and a Settlement Statement; and
  - (4) Executing a certification establishing that no federal income tax is required to be withheld under the Foreign Investment and Real Property Tax Act (FIRPTA), or written consent to withholding of tax from the proceeds of the sale, as required.
- B. At Closing, Buyer shall pay the full Purchase Price as set forth in Section 1 of this Agreement (subject to the prorations and adjustments required hereunder) and shall execute and deliver such other documents as the Title Company may reasonably request to effect the transactions contemplated by this Agreement.
9. **Commissions.** Seller and Buyer represent to each other that neither Seller (in the case of Seller's representation) nor Buyer (in the case of Buyer's representation) has dealt with nor does it have any knowledge of any other broker or other person who has or may have any claim against Seller, Buyer or the Property for a brokerage commission, finder's fee or like payment arising out of or in connection with this transaction.
10. **Buyer's Termination Right.** Within the Inspection Period, Buyer may elect for any reason or no reason whether or not to go forward with this Agreement to Closing, which election shall be made by notice to Seller given within the Inspection Period. This Agreement shall terminate unless Buyer provides written notice to go forward with this Agreement to Closing on or before the expiration of the Inspection Period.
11. **Casualty Loss.** Risk of loss by damage or destruction to the Property prior to the Closing shall be borne by the Seller. Seller's property liability insurance shall be maintained until the Closing; the Buyer shall be responsible for providing its own liability insurance on and after the date of Closing.

12. **Seller's Covenants.** Seller covenants and agrees that from and after the date of full execution of this Agreement and until the date of Closing:
  - A. Seller shall allow Buyer and its agents and consultants, continuing access to the Property during business hours for the purpose of conducting inspections and investigations. Such access may be exercised by Buyer or by agents of or consultants to Buyer on Buyer's behalf. After completion of its inspection, Buyer shall restore any disruption of the physical elements of the Property caused by Buyer's inspection.
  - B. Seller will: (1) cause the Property to be insured against all ordinary and insurable risks and to be maintained and repaired in a careful, prudent and efficient manner, in accordance with applicable requirements of all contracts, ordinances, laws and insurance policies; and (2) bear the risk of loss to the Property, through the hour of Closing. Seller shall not take any other action which would cause any representation, warranty or covenant set out herein to be untrue as of Closing without Buyer's prior written consent.
  - C. Seller shall maintain and operate the Property in its current order, condition and repair, normal wear excepted.
  - D. Seller shall not engage in or permit any sale, assignment, disposition, easement or encumbrance of the Property or any part thereof.
  - E. Seller shall reasonably cooperate in good faith with Buyer with any zoning or permitting process as part of the due diligence investigation.
  
13. **Representations and Warranties.** Seller warrants, represents, covenants, and agrees as follows as of the date of this Agreement and as of the Closing:
  - A. Seller has full power and authority to enter into and perform this Agreement in accordance with its terms, and the person executing this Agreement on behalf of Seller has been duly authorized to do so;
  - B. Seller is the owner in fee simple of the Property, subject only to encumbrances, matters and interests of record and liens for taxes and installments of assessments not yet due or payable, and there are no leases, options or agreements affecting the Property except those disclosed in writing to Buyer that will be cancelled or terminated on or before Closing without any liability to Buyer;
  - C. There is no litigation or proceeding pending or, to the best of Seller's knowledge, threatened against Seller relating to the Property;
  - D. No condemnation or eminent domain proceedings are now pending or threatened concerning the Property, and Seller has received no notice from any governmental agency or authority or other potential condemnor concerning any right of way, utility or other taking which may affect the Property;
  - E. To the best of Seller's knowledge, and without independent investigation, the Property presently complies with all applicable federal, state and local laws pertaining to the quality of the environment (the "Environmental Laws");
  - F. As of the Closing, the Property will comply with all applicable Environmental Laws;
  - G. To the best of Seller's knowledge, and without independent investigation, the Property does not now contain any underground storage tanks, substances regulated by the Environmental Laws and, to the best of Seller's knowledge, the Property is not listed on any state or federal environmental remediation priority list;
  - H. As of the Closing, the Property will not now contain any underground storage tanks, substances regulated by the Environmental Laws and the Property will not be listed on any state or federal environmental remediation priority list;
  - I. To the best of Seller's knowledge, and without independent investigation, the Property does not have any conditions that would inhibit the development of the property including but, not limited to, improper termination of past utilities serving the property and improper disposal (according to current building codes) of building debris and foundations of previous structures on the property.

- J. As of the Closing, the Property will not have any conditions that would inhibit the development of the property including but, not limited to, improper termination of past utilities serving the property and improper disposal (according to current building codes) of building debris and foundations of previous structures on the property.
- K. Seller has used no substance regulated by the Environmental Laws at the Property and has not permitted any other person to do so;
- L. Neither Seller nor any of Seller's predecessors in title to the Property within the past five years has claimed, with respect to any of the Property, the benefit of any law permitting a special use valuation (such as "agricultural", "open space", or "green belt") for the purposes of obtaining a lower ad valorem tax rate and a change in the ownership or use of the Property from its present ownership and use will not trigger liability or "rollback" taxes or other assessments for prior years;
- M. Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transaction contemplated hereby will: (1) require Seller to file or register with, notify, or obtain any permit, authorization, consent or approval of, any governmental or regulatory authority; (2) conflict with or breach any of the organizational documents of Seller; (3) violate or breach any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, lease, contract, agreement or other instrument, commitment or obligation to which Seller is a party or by which Seller, the Property or any of Seller's material assets may be bond; or (4) violate any order, writ, injunction, decree, judgment, statute, law or ruling of any court or governmental authority applicable to Seller, the Property, or any of Seller's material assets; and
- N. Neither this Agreement nor any exhibit nor any written statement furnished or to be furnished by Seller to Buyer in connection with the transaction contemplated by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading and Seller agrees to furnish to Buyer copies of any notice, claim or demand received by Seller during the pendency of this Agreement which would materially change any representation given by Seller herein.

The representations and warranties set forth herein shall survive Closing. Seller shall immediately notify Buyer if any of the representations, warranties or covenants of Seller become untrue prior to the date of Closing.

- 14. **Eminent Domain.** If, before Closing, any substantial portion of the Property is taken or threatened by eminent domain, or if there is a material obstruction of access because of a taking or threatened taking by eminent domain, Seller shall, within ten (10) days of such taking, notify Buyer thereof and Buyer shall have the option to terminate this Agreement upon notice to Seller given within ten (10) days after such notice from Seller; or proceed with the purchase of the Property without reduction in the Purchase Price, in which event Seller shall assign to Buyer all Seller's right, title and interest in all amounts due or collected by Seller as condemnation awards.
- 15. **Indemnification.** Seller shall indemnify, defend and hold harmless the Buyer, its successors and assigns, and the Property from and against: (i) any loss or damage to Buyer arising from any misrepresentation or any breach of warranty or default of any covenant or agreement of Seller under this Agreement; (ii) damages due to the presence of toxic or hazardous materials or underground storage tanks and/or the use of, disposal at or storage of toxic or hazardous materials on the Property by Seller or its agents, employees or contractors that are known to Seller and undisclosed to Buyer; and (iii) all costs and expense, including reasonable attorney's fees, related to any actions, suits, or judgments incident to any of the foregoing.

16. **Remedies.** If Seller defaults in the performance of Seller's obligations under this Agreement, or if any representation or warranty made by Seller herein proves to be false or misleading in any material respect, or if Seller breaches any representation or warranty made by Seller herein, Buyer shall have all lawful remedies, including without limitation enforcing this Agreement by suit for specific performance. If Buyer defaults in the performance of Buyer's obligations under this Agreement, Seller's sole remedy shall be to terminate this Agreement, and the parties shall have no further rights, claims, liabilities or obligations under this Agreement.
17. **Conditions Subsequent.** In consideration of the Buyer's purchase of the Property, the Seller, for themselves, their minor children, heirs, assigns, administrators, estates or executors, hereby fully, finally and forever releases, discharges and hold harmless the Buyer, its officers, employees, representatives or agents from any all liability and responsibility whatsoever, however caused, for any and all damages, claims or causes of action that the Seller, their minor children, heirs, assigns, administrators, estates or executors may have for any loss, illness, personal injury. death arising out of, connected with, or in any manner pertaining to the Seller and their minor children residing on the Property prior to Closing.

18. **Miscellaneous.**

- A. *Notices* - All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered personally or deposited in the United States Mail by Registered or Certified Mail, return receipt requested, postage prepaid, or sent by any nationally recognized delivery service and addressed as set forth below:

If to Buyer: The City of Xenia  
107 East Main Street  
Xenia, OH 45385  
Attn: City Manager

If to Seller: Jonathan W. and Sarah M. Young  
588 Dayton Xenia Road  
Xenia, OH 45385

- Any party may change the address to which notices are to be addressed by giving the other party notice in the manner herein set forth. Notices sent in compliance with this Section shall be effective: (i) upon receipt or refusal if delivered personally; (ii) one (1) business day after depositing with such an overnight courier service; or (iii) three (3) business days after deposit in the mails if mailed.
- B. *Binding Agreement* - This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective successors and assigns.
- C. *Assignment* - Buyer may assign its rights and interests herein or delegate its duties hereunder with the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.
- D. *Governing Law* - This Agreement shall be construed and interpreted according to the laws of the State of Ohio.
- E. *Entire Agreement* - This Agreement, together with the Exhibits attached hereto and incorporated by reference herein, constitutes the entire undertaking between the parties hereto and supersedes any and all prior and contemporaneous agreements, arrangements and understandings between the parties.
- F. *Survival of Obligations* - All matters required to be performed hereunder after the date of Closing and all Conditions Subsequent shall survive Closing.
- G. *Time* - Time is of the essence of this Agreement, provided that if any date upon which some action, notice or response is required of any party hereunder occurs on a weekend or national holiday, such action, notice or response shall not be required until the next succeeding business day.
- H. *Attorneys' Fees* - In the event of any proceeding between the parties hereto to enforce any of the provisions of this Agreement, the prevailing party in such proceeding shall be entitled to an

award of all costs and expenses, including reasonable attorneys' fees. This section shall survive the Closing or a prior termination hereof.

- I. *Execution* - This Agreement may be executed simultaneously or in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of this document may be accomplished by electronic facsimile (FAX) or electronic transmission (Email); if FAX or Email delivery is utilized, the original document shall be promptly delivered thereafter by ordinary U.S. mail service.

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement as of the day and year set forth beneath each party's respective signature.

**BUYER:**

City of Xenia, Ohio  
an Ohio Municipality

By: \_\_\_\_\_  
Name: Brent W Merriman  
Title: City of Xenia City Manager

**SELLER:**

Jonathan W. Young, Husband

Sarah M. Young, Wife

By: \_\_\_\_\_  
Name: Jonathan W. Young  
Title: Property Owner

By: \_\_\_\_\_  
Name: Sarah M. Young  
Title: Property Owner

Approved as to form:

By: \_\_\_\_\_  
Donnette A. Fisher  
City of Xenia Director of Law



**EXHIBIT A**  
**Map of Property**

**EXHIBIT A CONTINUED**  
**Legal Description of the Property**