

ORDINANCE 2005-19
Passed April 5, 2005

AN ORDINANCE DECLARING CERTAIN MUNICIPAL PROPERTY TO BE SURPLUS AND AUTHORIZING THE SALE AND EXCHANGE OF SUCH PROPERTY WITH LIBERTY TOWNSHIP IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT ATTACHED HERETO AS EXHIBIT A AND DECLARING AN EMERGENCY.

WHEREAS, the City has the contractual right to acquire 25.248 acres, more or less, from G. Frederick Smith Chemical Company pursuant to an Agreement dated October 12, 2004, and subject to the contingencies set forth in such Agreement, and

WHEREAS, pursuant to the provisions of the Codified Ordinances of the City of Powell, Council may by ordinance approve a specific Agreement for sale or lease of municipal property that has been declared to be surplus, and

WHEREAS, Council has determined that it would be proper to exchange such property for other property currently owned by Liberty Township.

NOW THEREFORE BE IT ORDAINED BY THE MUNICIPALITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

Section 1: That Council hereby finds and determines that the 25.248 acre, more or less, parcel to be acquired from GFS Chemical Company, if acquired pursuant to a separate Agreement with such company, is determined to be excess municipal property.

Section 2: Council further authorizes the City Manager to execute an Agreement, which is attached hereto and incorporated herein as *Exhibit A*, on behalf of the City for the sale and exchange of the GFS Property described above to Liberty Township in return for delivery of title from Liberty Township of certain Township property as further described in such Agreement. Council further authorizes the City Manager to extend the time for performance and to make such administrative modifications in the Agreement as may be necessary from time to time at the discretion of the City Manager.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and any of the decision making bodies of the Municipality of Powell which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the Municipality of Powell, Delaware County, Ohio.

Section 3: Council hereby finds that an emergency exists necessitating the immediate implementation of this Ordinance, the necessity arising out of the fact the attached Agreement has a definite date for closing; has multiple contingencies which must be resolved; and must be closed by a date certain and it is therefore necessary to have the immediate implementation of this Agreement for the purpose of resolving contingencies. Council therefore determines that this Ordinance shall take effect immediately upon its adoption.

VOTE ON RULES SUSPENSION: Y 7 N 0

VOTE ON ORDINANCE 2005-19: Y 7 N 0

This legislation has been posted in accordance with the City Charter on this date 3/6/05.
Dawn Nauman
Clerk of Council

Dan Wiencek
Dan Wiencek Date
Mayor

Dawn Nauman 4/9/05
Dawn Nauman Date
Clerk of Council

AGREEMENT FOR SALE AND EXCHANGE OF REAL PROPERTY

This Agreement is made by and between the City of Powell, a Municipal Corporation, hereinafter referred to as "the City" and The Board of Trustees of Liberty Township, Delaware County, Ohio, hereinafter referred to as "the Township" regarding the sale and exchange of 25.248 acres more or less Parcel No. 31913201017000 (GFS Property) for .550 acres more or less, Parcels No. 319245130605000, 31942513066000, and 31942513067000 (Township Property) and indirectly affecting a parcel consisting of 25 acres more or less (City Property) presently owned by M/I Homes.

WHEREAS, The City and GFS have entered a certain agreement for sale and exchange of real property involving the City Property and the GFS Property, which transaction has various contingencies and is not yet closed, and

WHEREAS, the Township has commenced a proceeding to appropriate the GFS property in the Court of Common Pleas of Delaware County, Ohio which matter is pending with a trial date scheduled for September 19, 2005, and

WHEREAS, the Township and City desire to enter an agreement for the sale and exchange of the GFS Property for the Township Property provided that the City has closed its separate exchange transaction with GFS and,

WHEREAS, under the *Agreement* between the City and GFS the City may become a party to the litigation mentioned above in place of GFS, and the City and Township desire to reach an agreement to conclude such litigation provided the City takes title to the GFS Property, the following Agreement is made:

NOW THEREFORE:

- I. **Contingencies:** The obligations set forth in this *Agreement* are expressly contingent upon the following:
 - A. Not later than August 19, 2005, the closing and disbursement of a certain exchange agreement between the City and G. Frederick Smith Chemical Company (GFS) dated 10-12-04 wherein GFS will exchange the GFS Property noted above to the City in exchange for other property.

- B. Review and approval by the acquiring property owners of the *Title Insurance Commitment* and proposed *Deed* and survey of the property it is to acquire.
- C. The City's becoming a successor party to GFS after the closing referred to above in the pending litigation, and the parties' executing a mutually agreeable *Judgment Entry* approved by the Court concluding the above pending litigation, vesting title in the subject premises in the Township, and reciting the consideration to be paid to the City for the GFS Property.
- D. Proper legislative approval by the parties authorizing the transfer and sale of the GFS Property and the Township Property pursuant to the terms of this *Agreement*.

II. **Exchange:** The parties agree that once the City acquires the GFS property, it shall exchange the GFS Property by transferring title to the Township, and in return for such transfer, the Township shall transfer title to the City of the Township Property, and the parties shall set the value for each premises, and make arrangements for the excess value of one property over the other in accordance with the terms of this *Agreement*.

III. **Price:** The parties agree that for purposes of this *Agreement*, the value of the GFS Property consisting of 25.248 acres more or less, shall be Seven hundred eighty-two thousand dollars (\$782,000.00). The parties further agree that the value of the Township Property will be established after the City acquires the GFS Property. The City and the Township will agree on an appraiser who will appraise the Township Property. The appraiser's fees and expenses will be paid in equal shares by the City and the Township and the appraisal will be performed on behalf of both the City and the Township. If the City and Township cannot agree on the identity of an appraiser, each party to this *Agreement* will each engage and compensate an appraiser and the two appraisers will hire a third appraiser to provide the parties with the value on which the appraisers agree. In the event this option is necessary, the third appraiser shall be paid by the Township and the City in equal shares. The value of the Township Property will become final if the parties' agreed upon appraiser issues a report of value or if three appraisers selected in accordance with the procedure noted above establish its value. Both parties will have access to any appraisals which shall in addition be performed on behalf of both parties pursuant to this **Paragraph III**.

IV. **Excess Price:** The parties to this *Agreement* acknowledge that it is their belief that the GFS Property and the Township Property are not of equal value. The parties believe that the GFS Property is worth more. When the

appraisal is concluded, the excess price (the difference between Seven hundred eighty-two thousand dollars {\$782,000.00} and the value of the Township Property) shall be held by Liberty Township. The Township shall forthwith appropriate such excess price for Township park purposes including acquisition, appraisal, engineering, construction, development, legal fees, and other costs reasonably associated with or attendant to the acquisition of park land and/or the construction of amenities within the Township including the City of Powell. The Township Trustees shall be obligated to expend these funds for the purposes noted above within five (5) years from the date of closing of the transaction between the City and Township; the Trustees will have sole discretion as to how the funds are expended for park purposes. The Township agrees to provide the City with periodic reports, at least semi-annually, regarding the disposition of these funds until such excess funds are dissipated in full, pursuant to the terms of this *Agreement*. The parties acknowledge that under no circumstances will the City owe the Township any excess funds and, in the event the Township Property were to appraise for more than the GFS Property, the exchange of properties would be deemed an even exchange.

V. Litigation: The parties acknowledge there is pending litigation in the Court of Common Pleas of Delaware County, Ohio styled as "The Board of Township Trustees of Liberty Township, Plaintiff vs. G. Frederick Smith Chemical Company, *et al.*, Defendants, Case No. 03CV-H-07-481, a proceeding initiated by the Township for condemnation of the GFS Property. Upon conclusion of the City's closing with GFS, the City agrees to be substituted as a party for GFS Chemical Company, the City then becoming the real party in interest as the owner of the GFS Property. The Township agrees that once the City takes title it shall be substituted as the party-defendant in the lawsuit, pursuant to the provisions of **Ohio Civil Rule 25(C)**. In the event the exchange between the Township and the City does not occur for any reason, the litigation noted above with a current trial date of September 19, 2005 shall be carried to a conclusion. The subject of the litigation is appropriation of the GFS Property which is the subject of this *Agreement*. There are no other claims set forth in such litigation. In the event the City and Township complete the exchange which is the subject of this *Agreement*, a *Judgment Entry* will be agreed upon wherein the Township takes title to the GFS Property as a result of an appropriation and the Township compensates the City the consideration value of Seven hundred eighty-two thousand dollars (\$782,000.00), being the agreed-upon value of such property, with disposition of such consideration less the value of the Township Property to be expended for park purposes in accordance with the provisions of this *Agreement*, including **Paragraph III and Paragraph IV**.

VI. Title, Survey, and Conveyance:

A. **Title:** The acquiring entity shall receive such evidence of title for the property it is acquiring as satisfies such acquiring entity. Within thirty (30) days after completion of this *Agreement*, each party shall notify the other if it is satisfied with the status of title to the property it is acquiring. If not, this *Agreement* is null and void and/or subject to renegotiation.

B. **Survey:** The City will pay the cost of any survey work for acquisition of the Township Property if necessary to transfer title. If the City must pay for a field survey to acquire the GFS Property, one-half of the cost of such field survey will be paid by the City and the other half of the cost of the field survey shall be paid by the Township. Each party will grant the other party disclosure of and access to surveys for both properties. Within thirty (30) days of the execution of this *Agreement*, the parties shall notify the other party as to the status of surveys on the property, and the cost associated therewith.

C. **Conveyance:** The Township shall take title to the GFS Property by *Judgment Entry* in the litigation as noted above and by *Quit Claim Deed* from the City. The City shall take title to the Township Property by *Quit Claim Deed* from the Township. Each party shall deliver to the other party proposed *Deeds of Conveyance* within thirty (30) days of the date of this *Agreement* which form of conveyance shall be approved by the other party. The Township shall additionally deliver to the City within thirty (30) days a proposed *Judgment Entry* in the condemnation case which must be approved by the City, which approval shall not be unreasonable withheld.

VII. **Taxes:** The parties contemplate that the exchange of property will occur in calendar year 2005. Provided this transaction closes pursuant to this *Agreement*, each conveying party shall be responsible to pay real estate taxes for the property it is conveying for the entire calendar year 2005.

VIII. **Tenant's Rights:** The Township Property is occupied by a church tenant. A copy of the *Lease* for the premises is attached as *Exhibit A*. The Township represents that the church tenant is in the property on a month to month basis. The Township agrees that at closing any interest it has in the leasehold as lessor shall be assigned to the City, including rent. The City agrees that if the church wishes it may retain occupancy of the premises pursuant to such *Lease Agreement* through the end of 2005.

IX. **Closing and Possession:** This transaction shall close as expeditiously as possible after the City closes its transaction with GFS, but in any event this transaction shall close within sixty (60) days of the City's having acquired the GFS Property and before the end of calendar year 2005. The

Township shall be granted possession of the GFS Property at the time of closing. The City shall be granted possession of the Township Property at closing subject to tenant's rights noted above.

X. **Failure of Contingencies:** The City and the Township acknowledge and agree that if the City does not obtain title to the GFS Property on/before August 19, 2005, it shall not become a party to the litigation described in **Paragraph V** herein, and that the City's equitable interest in that property will have expired.

XI. **Modification:** The parties to this *Agreement* acknowledge that this *Agreement* is the entire *Agreement* between the parties and there are no other *Agreements*, written or oral, other than contained herein. This *Agreement* may not be modified except in writing adopted by the parties and executed by an official of such party duly authorized to execute this instrument. All parties executing this instrument acknowledge that they are duly authorized to do so pursuant to legislation adopted by each governmental entity.

Dated this ____ day of _____, 2005.

The City of Powell

By: _____
Steve Lutz, City Manager
Pursuant to Ordinance No. ____

Board of Township Trustees of Liberty Township

By: _____

By: _____

By: _____

Pursuant to Resolution No. ____

RESOLUTION NO. 05- 116

**RESOLUTION AUTHORIZING AN EXCHANGE OF PROPERTY WITH
THE CITY OF POWELL TO FACILITATE THE ACQUISITION AND
DEVELOPMENT OF PARK PROPERTY WITHIN LIBERTY TOWNSHIP**

WHEREAS, the Liberty Township Trustees have filed a land appropriation lawsuit to acquire 25.248± acres of land for the stated purpose of establishing public parklands; and

WHEREAS, pursuant to Ohio Revised Code § 505.10(A)(5) and (6), the Liberty Township Trustees have the authority upon unanimous vote to convey real property to the City of Powell upon such terms as are agreed upon; and

WHEREAS, the City of Powell is in the process of acquiring an equitable interest in the 25.248± acre property which is the subject of the appropriation action; and

WHEREAS, the Liberty Township Trustees hold title to a certain improved property located in the City of Powell which can be utilized by Powell in the furtherance of the downtown redevelopment plan, or for such other purposes as deemed advisable by Powell Council; and

WHEREAS, the City of Powell and Liberty Township Trustees wish to enter into an agreement whereby the old firehouse site, together with additional considerations, are conveyed to the City of Powell in exchange for the conveyance by the City of Powell of the 25.248± acre site to the Liberty Township Trustees; and

WHEREAS, the Liberty Township Trustees recognize and acknowledge that the proposed Agreement for Sale and Exchange of Real Property is in the best interest of all the residents of Liberty Township, including those residing both in the incorporated and in the unincorporated territory of the Township.

**IT IS, THEREFORE, RESOLVED BY THE BOARD OF TRUSTEES OF
LIBERTY TOWNSHIP, DELAWARE COUNTY, OHIO:**

SECTION ONE: The five-page document entitled "Agreement for Sale and Exchange of Real Property," a complete copy of which is attached to this Resolution No. 05- 116, is hereby approved and accepted by the unanimous vote of the Board of Trustees.

SECTION TWO: The Administrator is authorized to execute the attached contract as well as any additional documents necessary to close the transaction described, subject to the approval of legal counsel.

SECTION THREE: The Clerk is hereby authorized to appropriate and make expenditures necessary to close the transaction described and to account for the transactions called for in the succeeding 60 months, including the transmittal of a report


of those expenditures to the City Manager of the City of Powell at regular intervals of not less frequently than every six months.

SECTION FOUR: It is found and determined that all formal actions of the Trustees concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Trustees, and that all deliberations of the Trustees and of any of its committees that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements, including § 121.22 of the Ohio Revised Code, unless otherwise excepted or exempted.


This Resolution shall take effect and be in force from and after the 4 day of April, 2005.

ADOPTED:

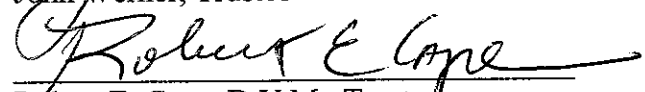
April 4, 2005



Kim Cellar, Trustee

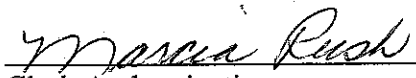


John Werner, Trustee



Robert E. Cape, D.V.M., Trustee

APPROVED:



Clerk Authentication

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WHEREAS, the Township and City desire to enter an agreement for the sale and exchange of the GFS Property for the Township Property provided that the City has closed its separate exchange transaction with GFS and,

WHEREAS, under the Agreement between the City and GFS the City may become a party to the litigation mentioned above in place of GFS, and the City and Township desire to reach an agreement to conclude such litigation provided the City takes title to the GFS Property, the following Agreement is made:

NOW THEREFORE:

- I. **Contingencies:** The obligations set forth in this Agreement are expressly contingent upon the following:
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 - B. Review and approval by the acquiring property owners of the *Title Insurance Commitment* and proposed *Deed* and survey of the property it is to acquire.
 - C. The City's becoming a successor party to GFS after the closing referred to above in the pending litigation, and the parties executing a mutually agreeable *Judgment Entry* approved by the Court concluding the above pending litigation, vesting title

in the subject premises in the Township, and reciting the consideration to be paid to the City for the GFS Property.

- D. Proper legislative approval by the parties authorizing the transfer and sale of the GFS Property and the Township Property pursuant to the terms of this Agreement.

II. **Exchange:** The parties agree that once the City acquires the GFS Property, it shall exchange the GFS Property by transferring title to the Township, and in return for such transfer, the Township shall transfer title to the City of the Township Property, and the parties shall set the value for each premises, and make arrangements for the excess value of one property over the other in accordance with the terms of this Agreement.

III. **Price:** The parties agree that for purposes of this Agreement, the value of the GFS Property consisting of 25.248 acres more or less, shall be seven hundred eighty-two thousand dollars (\$782,000.00). The parties further agree that the value of the Township Property will be established after the City acquires the GFS Property. The City and the Township will agree on an appraiser who will appraise the Township Property. The appraiser's fees and expenses will be paid in equal shares by the City and the Township and the appraisal will be performed on behalf of both the City and the Township. If the City and Township cannot agree on the identity of an appraiser, each party to this Agreement will each engage and compensate an appraiser and the two appraisers will hire a third appraiser to provide the parties with the value on which the appraisers agree. In the event this option is necessary, the third appraiser shall be paid by the Township and the City in equal shares. The value of the Township Property will become final if the parties' agreed upon appraiser issues a report of value or if three appraisers selected in accordance with the procedure noted above establish its value. Both parties will have access to any appraisals which shall in addition be performed on behalf of both parties pursuant to this **Paragraph III.**

IV. **Excess Price:** The parties to this Agreement acknowledge that it is their belief that the GFS Property and the Township Property are not of equal value. The parties believe that the GFS Property is worth more. When the appraisal is concluded, the excess price (the difference between seven hundred eighty-two thousand dollars {\$782,000.00} and the value of the Township Property) shall be held by Liberty Township. The Township shall forthwith appropriate such excess price for Township park purposes including acquisition, appraisal, engineering, construction, development, legal fees, and other costs reasonably associated with or attendant to the acquisition of park land and/or the construction of amenities within the Township including the City of Powell. The Township Trustees shall be obligated to expend these funds for the purposes noted above within five (5) years from the date of closing of the transaction between the City and Township; the Trustees will have sole discretion as to how the funds are expended for park purposes. The Township agrees to provide the City with periodic reports, at least semi-annually, regarding the disposition of these funds until such excess funds are dissipated in full, pursuant to the terms of this Agreement. The parties acknowledge that

under no circumstances will the City owe the Township any excess funds and, in the event the Township Property were to appraise for more than the GFS Property, the exchange of properties would be deemed an even exchange.

V. **Litigation:** The parties acknowledge there is pending litigation in the Court of Common Pleas of Delaware County, Ohio styled as "The Board of Township Trustees of Liberty Township, Plaintiff vs. G. Frederick Smith Chemical Company, *et al.*, Defendants, Case No. 03CV-H-07-481, a proceeding initiated by the Township for condemnation of the GFS Property. Upon conclusion of the City's closing with GFS, the City agrees to be substituted as a party for GFS Chemical Company, the City then becoming the real party in interest as the owner of the GFS Property. The Township agrees that once the City takes title it shall be substituted as the party-defendant in the lawsuit, pursuant to the provisions of Ohio Civil Rule 25(C). In the event the exchange between the Township and the City does not occur for any reason, the litigation noted above with a current trial date of September 19, 2005 shall be carried to a conclusion. The subject of the litigation is appropriation of the GFS Property which is the subject of this Agreement. There are no other claims set forth in such litigation. In the event the City and Township complete the exchange which is the subject of this Agreement, a *Judgment Entry* will be agreed upon wherein the Township takes title to the GFS Property as a result of an appropriation and the Township compensates the City the consideration value of seven hundred eighty-two thousand dollars (\$782,000.00), being the agreed-upon value of such property, with disposition of such consideration less the value of the Township Property to be expended for park purposes in accordance with the provisions of this Agreement, including Paragraph III and Paragraph IV.

VI. **Title, Survey, and Conveyance:**

A. **Title:** The acquiring entity shall receive such evidence of title for the property it is acquiring as satisfies such acquiring entity. Within thirty (30) days after completion of this Agreement, each party shall notify the other if it is satisfied with the status of title to the property it is acquiring. If not, this Agreement is null and void and/or subject to renegotiation.

B. **Survey:** The City will pay the cost of any survey work for acquisition of the Township Property if necessary to transfer title. If the City must pay for a field survey to acquire the GFS Property, one-half of the cost of such field survey will be paid by the City and the other half of the cost of the field survey shall be paid by the Township. Each party will grant the other party disclosure of and access to surveys for both properties. Within thirty (30) days of the execution of this Agreement, the parties shall notify the other party as to the status of surveys on the property, and the cost associated therewith.

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Agreement which form of conveyance shall be approved by the other party. The Township shall additionally deliver to the City within thirty (30) days a proposed *Judgment Entry* in the condemnation case which must be approved by the City, which approval shall not be unreasonably withheld.

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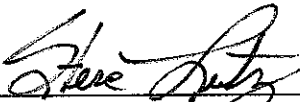
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X. **Failure of Contingencies:** The City and the Township acknowledge and agree that if the City does not obtain title to the GFS Property on/before August 19, 2005, it shall not become a party to the litigation described in **Paragraph V** herein, and that the City's equitable interest in that property will have expired.

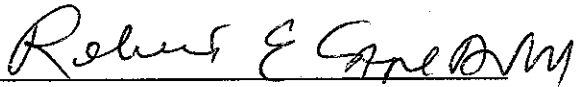
XI. **Modification:** The parties to this Agreement acknowledge that this Agreement is the entire Agreement between the parties and there are no other Agreements, written or oral, other than contained herein. This Agreement may not be modified except in writing adopted by the parties and executed by an official of such party duly authorized to execute this instrument. All parties executing this instrument acknowledge that they are duly authorized to do so pursuant to legislation adopted by each governmental entity.

Dated this 5th day of April, 2005.

The City of Powell

By: 
Steve Lutz, City Manager
Pursuant to Ordinance No. 2005-19

Board of Township Trustees of Liberty Township

By: 

By: 

By: 

Pursuant to Resolution No. 05-116