

RECEIVED
JAN - 9 2009
S. Bullock

3:47 p.m.

City of Durham North Carolina

Contract Authorization

(To be completed by Department)

RUSH C. Clerk

Date of Contract
Department
Contract No. (If previously Assigned)
Durham Administrator (Must be MUNIS user)
Contract Type Select...

Vendor Information

Vendor Name
Address 1
Address 2
City State Zip
Phone Fax Email

General Information

Capital Project Ordinance Number
Grant Project Ordinance Number
Payment Terms
Progress Payments

Advertising: Advertising was done Advertising not required
Performance Bond: Enclosed Not Required Waived by Council for this project
Payment Bond: Enclosed Not Required Waived by Council for this project

Privilege License: Yes No Exempt
Insurance Requirements: Yes No

Contract Period Start Finish

Contract Funding Breakdown

(Please input the fiscal year and account code for amounts of funding for this contract.)

Fiscal Year	Org Code	Object Code	Project Code	Amount
2008-2009	0100	661100		\$700,000.00

"Revenue"

Total Contract Amount:

Authorization

City Council: Meeting Date

Agenda Item#

City Manager:

Date

[]

Department Head or Designee

Chris D Boyer

- The City Attorney's Office is to review the way the Contractor has signed the contract.
- The City Attorney's Office is to review the way a bond has been signed.

City Attorney's Office

Date:

[]

Comments

Requesting City Manager approval for sale of Erwin Field Park, Parcel #113385, to Duke University for agreed price of \$700,000.00. Closing to occur on or before January 30, 2009. City Council approved 11/17/2008. Agenda item # 5634. Second Parcel #113384, 1621 Erwin Rd., will be purchased once LWCF conversion request is complete.

Department of Finance Use Only

Contract Number

5446

Compliance

yes

Funds Availability

N/A

Date Encumbered

1/8/09

V 36248

Amclair
CONTRACT MUST BE EXECUTED BY VENDOR PRIOR TO CITY AUTHORIZATION

DURHAM



1869
CITY OF MEDICINE

January 8, 2009

MEMO TO: Thomas J. Bonfield, City Manager

FROM: Chris D. Boyer, Interim Director, General Services Department *Collo*
Sandra K. Harper, Real Estate Manager *SH*
Cecil E. Woods, Real Estate Officer *CW*
General Services Department

SUBJECT: Agreement of Sale, Erwin Field Park to Duke University

The City is in the process of selling the property known as Erwin Field Park to Duke University.

City Council approved the sale of the park on November 17, 2008 (a copy of the approval is attached).

The parties have agreed that the sale of this property must occur on or before January 30, 2009.

Please sign the attached Agreement of Sale as agreed to by the City and Duke University.

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

AGREEMENT OF SALE

AGREEMENT OF SALE, made this 12th day of JAN., 2009 between the City of Durham, North Carolina, a municipal corporation ("the City") and Duke University, a North Carolina not for profit corporation ("Duke") with respect to the sale of the property known as Erwin Field Park located in Durham, North Carolina to be exchanged by the parties.

WHEREAS, Erwin Field Park is located in the Central Campus area within Duke's campus boundaries, and acquisition of it would be of long term benefit to Duke; and

WHEREAS, Erwin Field Park is no longer serving its intended function for the City as a neighborhood park and athletic field because of the declining number of residences around the park location; and

WHEREAS, Duke and City officials have held discussions and determined that the City is willing to sell Erwin Field Park to the University in order to have funding to construct a replacement soccer field or fields in another location to meet pressing park and recreational needs of the City; and

WHEREAS, the City is willing to include in the sale a second parcel adjoining Erwin Field Park, known as Parcel 113384, when and if the City can obtain from the National Park Service a conversion of the Land and Water Conservation Fund (LWCF) encumbrance on that parcel to another parcel;

NOW, THEREFORE, the parties agree as follows:

1. Price. Duke will acquire from the City that parcel of land, 5.5 acres, more or less, shown as Durham County Tax Parcel 113385, PIN 0822-17-20-3382, known as Erwin Field Park ("Erwin Field") at a price of \$700,000.00. When and if the LWCF encumbrance is removed from it, Duke also will acquire from the City all of that parcel of land comprising Durham County Tax Parcel 113384 consisting of 0.76 acres, more or less, and identified as PIN 0822-18-20-5644 at a price of \$100,000.00. The City will use its best efforts to remove the LWCF encumbrance from that parcel.

2. Payments. Duke will pay the City the sum of \$700,000.00 at the closing of Parcel 113385 and \$100,000.00 at the closing of Parcel 113384, with "closing" defined as the time at which the City tenders to Duke a deed of title to the property.

3. Shared Use of Erwin Field. For a period of two years from the date of closing, Duke will be responsible for any activity on the Erwin Field Park site, but the University will make every effort to share the field's use with the City until a replacement field for Erwin Field Park is built by the City or until Duke has an alternate need for the site, whichever occurs sooner. During this period of shared use, Duke will allow the City through its Parks and Recreation Department to reserve the field's use for athletic activities only (a) from 5:00 PM to 10:00 PM on week nights and from 8:00 AM to 2:00 PM on weekend days during Duke's academic year and (b) from 8:00 AM to 10:00 PM during the (summer) period between Duke's spring and fall terms at no cost to the City.

4. Title. Title to the parcels deeded from the City to Duke shall be delivered by non-warranty deed.

5. Public Access Easement. Duke agrees that it shall grant to the City a twenty foot (20 foot) public access easement from the end of the public right-of-way on Case Street along the northeastern property line of Parcel 113385 to the edge of Parcel 113384, and this easement shall be in force for the period in which the City is negotiating for the conversion of the LWCF encumbrance on Parcel 113384. The easement will terminate when and if Duke acquires title to Parcel 113384. The twenty foot easement shall be surveyed and recorded at the City's expense prior to closing

6. Closing and Closing Expenses. The parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title to Parcel 113385 on or before ~~December 31, 2008~~ ^{JANUARY 30, 2009}, at a place mutually agreeable to the parties. The City shall pay for the preparation of its own deed and for any excise tax (revenue stamps) required by law. Duke shall pay to record the deed(s) it receives; and the parties shall prorate by calendar year to the date of closing any real estate taxes assessed against the property.

8. Taxes and Assessments. The City of Durham warrants to Duke that there are no special assessments, either pending or confirmed, for sidewalk, paving, water, sewer or other improvements on or adjoining the parcel(s) it will be conveying.

9. Environmental Risks, Inspections and Reports. The City of Durham acknowledges that there are no existing or prior underground fuel oil tanks or fuel oil leaks on its respective property, no asbestos-containing materials or lead paints in or on its respective property, or other potential environmental risks associated with its respective property. Each party shall have the right to make such environmental inspections as it deems necessary within 30 days of the date of this contract. If such inspections reveal the existence of environmental problems, the party discovering the problem(s) shall bring such problem(s) to the attention of the property owning party and provide an estimate of assessing and remediating such problem(s). If the property owning party consents, the party discovering the problem(s) then shall have the right to undertake testing and abatement of such problem(s) at the property owning party's expense, with the cost of same to be recovered at closing. If the property owning party refuses to consent, this

1/26/09

Agreement shall become voidable at the option of either party.

10. Assignments. This contract may not be assigned without the written agreement of both parties, except to a subsidiary or related entity of either party.

11. Survival. If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

12. Entire Agreement. This contract contains the entire agreement of the parties and there are no representations, inducements or provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by both parties.

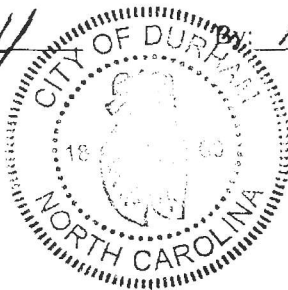
IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives on the date written above.

DUKE UNIVERSITY

By: Tallman Trask III
Tallman Trask III
Executive Vice President

ATTEST:

Ann Gray
Clerk



CITY OF DURHAM

Shirley A. Hoover
Deputy City Manager
11/9/08

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE OFFICER

DATE

NORTH CAROLINA
COUNTY of WAKE

ACKNOWLEDGMENT BY CITY OF DURHAM

I, a Notary Public in and for the aforesaid County and State certify that
D. Ann Gray personally appeared before me this day, and
acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal
corporation, and that by authority duly given and as the act of the City, the foregoing agreement was
signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and
attested by its said City Clerk or Deputy City Clerk. This the 12th day of
January, 2009

Lakew. Brooks
Notary Public

My commission expires:
6/25/2012

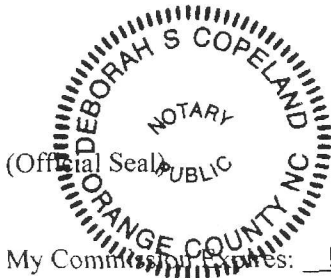


NORTH CAROLINA
DURHAM COUNTY

I, Deborah S. Copeland, Notary Public for said County and State, certify that
Tallman Trask III personally came before me this day and acknowledged that he is Executive Vice
President of Duke University, a corporation, and that by authority duly given and as the act of the
corporation, he signed the foregoing instrument.

Witness my hand and official seal, this the 11th day of November, 2008.

Deborah S. Copeland
Notary Public



My Commission Expires: 12/20, ~~2008~~ 2012

Attachment A: Tax # Parcels

