

Request For Board Action

REFERRED TO BOARD: December 8, 2021

AGENDA ITEM NO: 11

ORIGINATING DEPARTMENT: Administration

SUBJECT: Approval of a resolution authorizing and approving the transfer of certain real property from the Village of Antioch to the Township of Antioch, County of Lake, State of Illinois.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Village owns approximately 12 acres of land at 22821 North Avenue in the Village commonly known as the Bitner property. The property was acquired circa 2005 to be used for a pool and community recreation center. The Village later decided not to establish a pool or center on the property and currently there are no plans of the Village for use of the property.

The Township of Antioch has been looking to relocate their offices from Lake Villa and consolidate all Township functions including the Township Assessors office in one location in a more convenient Antioch location. The Township has approached the Village to contribute the Bitner property to the Township for the purpose of building a new facility to serve the community more efficiently and comprehensively. The attached inter-governmental agreement sets out the arrangement to accomplish the property transfer.

FINANCIAL IMPACT:

None.

DOCUMENTS ATTACHED:

1. Resolution
2. Inter-governmental Agreement

RECOMMENDED MOTION:

Motion to approve a resolution authorizing and approving the transfer of certain real property from the Village of Antioch to the Township of Antioch, County of Lake, State of Illinois.

Village of Antioch, Illinois

RESOLUTION NO. 21- _____

A RESOLUTION AUTHORIZING AND APPROVING THE TRANSFER OF CERTAIN REAL PROPERTY FROM THE VILLAGE OF ANTIOCH TO THE TOWNSHIP OF ANTIOCH, COUNTY OF LAKE, STATE OF ILLINOIS.

WHEREAS, the Village of Antioch ("Village") is a municipality located in Lake County, Illinois; and

WHEREAS, the Township of Antioch (the "Township") is governed by the Township Code, 60 ILCS 1/1-1, et seq.; and

WHEREAS, the Village owns a certain parcel of real property (inclusive of all improvements, legal rights and hereditaments thereto), located at 22821 North Avenue, Antioch, Illinois (the "Property") that is no longer necessary or useful for the Village; and

WHEREAS, the Township passed and approved an ordinance declaring it necessary and convenient for the Township to use the Property to construct a community building (the "Public Purpose"), and requesting that the Village transfer the Property to the Township, all in accordance with the provisions of the Illinois Local Government Property Transfer Act, 50 ILCS 605/0.01, et seq. (the "Property Transfer Act"); and

WHEREAS, the Village Mayor (the "Mayor") and the Board of Trustees of the Village (the "Village Board" and with the Mayor, the "Corporate Authorities") desire to transfer the Property to the Township, pursuant to the authority conferred by the Property Transfer Act; and

WHEREAS, the Township desires to undertake due diligence on the Property before accepting the conveyance of the Property; and

WHEREAS, the Corporate Authorities deem it advisable, necessary and in the best interest of the residents of the Village to transfer the Property pursuant to the terms of the intergovernmental agreement (the "Agreement"), attached hereto and incorporated herein as Exhibit A; and

WHEREAS, in accordance with the terms set forth in the Agreement, the Corporate Authorities desire to transfer the Property to the Township to be used for the Public Purpose;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Antioch, Lake County, Illinois, as follows:

Section 1. The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preambles to this Resolution are full, true and correct and do hereby, by reference, incorporate and make them part of this Resolution as legislative findings.

Village of Antioch, Illinois

Section 2. The Corporate Authorities hereby (a) approve the transfer of the Property to the Township; (b) approve the Agreement, or any modifications thereof; (c) authorize the Mayor to execute the Agreement and any instrument of conveyance to accomplish the transfer of the Property, including, but not limited to, a deed; (d) authorize and direct the Village Clerk to attest to and countersign any documentation necessary to carry out and effectuate the purpose of this Resolution and to affix the Seal of the Village to such documentation as may be necessary; and (e) authorize the Mayor and Village Clerk to take all other necessary and appropriate actions, in conjunction with the necessary and appropriate actions of the Township, to transfer all of the Village's rights and title in the Property to the Township, pursuant to the terms mutually agreed on by the Township and the Village set forth in the Agreement.

Section 3. This Resolution will be effective and in full force and effect from and after its passage and approval by a vote of two-thirds (2/3) of the members of the Village Board now holding office.

APPROVED this ____ day of _____, 2021.

Scott J. Gartner
Mayor

ATTEST:

Lori K. Romine
Village Clerk

Village of Antioch, Illinois

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWNSHIP OF ANTIOCH AND THE VILLAGE OF ANTIOCH, ILLINOIS REGARDING
THE TRANSFER AND CONVEYANCE OF REAL PROPERTY**

THIS INTERGOVERNMENTAL AGREEMENT (the “**IGA**”) is entered into this ____ day of _____, 2021, by and between the Township of Antioch (the “**Township**”) and the Village of Antioch, Illinois (the “**Village**”). The Township and the Village are hereinafter referred to as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, the Township is governed by the Township Code, 60 ILCS 1/1-1, *et seq.*; and

WHEREAS, the Village is an Illinois municipal corporation operating under the Illinois Municipal Code, 65 ILCS 1/1, *et seq.*; and

WHEREAS, the Parties are governed by the Local Government Property Transfer Act, 50 ILCS 605/0.01 *et seq.*, as enacted by the State of Illinois; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, as enacted by the State of Illinois, provides that “[a]ny power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred, and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment”; and

WHEREAS, the Local Government Property Transfer Act, 50 ILCS 605/0.01 *et seq.*, allows the Village to convey its real estate to the Township for public purposes; and

WHEREAS, the Village owns a certain parcel of real property (inclusive of all improvements, legal rights and hereditaments thereto), commonly known as 22821 North Avenue, Antioch, Illinois, and legally described on **Schedule A** (the “**Property**”), where Schedule A shall be attached at a later date pursuant to this IGA and at which time shall be incorporated herein, and said Property is no longer necessary or useful for the Village; and

WHEREAS, the Township intends to acquire certain real property to construct a community building (the “**Purpose**”); and

WHEREAS, the Township desires to acquire the Property from the Village and the Village desires to convey the Property to the Township; and

WHEREAS, the Township desires to undertake due diligence on the Property before accepting the conveyance of the Property;

NOW THEREFORE, in consideration of the matters set forth, the mutual covenants and agreements contained in this IGA and other good and valuable consideration, the Parties hereby agree as follows:

AGREEMENT

SECTION 1. Incorporation of Recitals. The Recitals of this IGA are hereby incorporated by reference into Section 1 of this IGA as if fully set forth herein.

SECTION 2. Transfer of the Property; Closing. The Village shall transfer the Property to the Township at the “**Closing**” by conveyance of a Quit Claim Deed in substantially similar form as attached hereto as **Schedule B**. The Closing shall be on a mutually agreed upon date by the Parties, but in no event later than sixty (60) days from the date of approval and execution of this IGA by all Parties subject to written amendment executed by the Parties to be charged. The Closing shall take place at a local office that will issue an Owner’s Policy of Title Insurance. The Township shall pay all closing costs, and at or prior to the Closing, the Village shall deliver, or cause to be delivered to the Township mutually agreeable and reasonable standard closing documents. Except as otherwise set forth herein, the term of this IGA shall expire at the closing.

SECTION 3. Legal Description and Property Identification Number (“PIN”). The approval and the terms of this IGA shall be subject to a survey and a legal description being transmitted to the parties by a mutually acceptable surveyor, land planner or title company authorized to do business in the State of Illinois. The legal description, once received, shall be attached to this IGA as Schedule A and shall further be attached to Schedule B, the Quit Claim Deed, and shall be incorporated herein. Once a property identification number has been determined or created, if at all, in accordance with law, Schedule B shall be amended to insert the PIN.

SECTION 4. Term. The term of this IGA shall commence upon the final execution of the executing parties and shall continue to and through the closing as contemplated herein, unless terminated earlier as set forth in this IGA.

SECTION 5. Authorizing Legislation. The Township shall pass an ordinance as required by the Local Government Property Transfer Act to effectuate the terms of this IGA (the “**Ordinance**”). The Village shall pass a resolution as required by the Local Government Property Transfer Act to effectuate the terms of this IGA (the “**Resolution**”, and together with the Ordinance, the “**Legislation**”). Each Party shall deliver a copy of the Legislation it passed to the Title Company at the Closing. In the event either Party fails to pass its respective piece of Legislation by _____, 2022, this IGA shall be deemed null and void and of no further effect.

SECTION 6. Property Transferred “As Is”. The Township acknowledges and agrees that it is accepting the transfer of the Property on an “as is” basis. Except as is otherwise expressly provided in this IGA, the Village hereby specifically disclaims any warranty, representation, or guarantee, whether oral or written, whether express or implied, from or on behalf of the Village concerning: the nature and condition of the Property and the suitability thereof for any and all activities and uses that the Township chooses to conduct thereon; the manner, construction, condition and state of repair or lack of repair of any improvements; the compliance of the Property and any improvements or their operation with any laws, rules, ordinances or regulations of any government or other body; and any other matter whatsoever except as expressly set forth in this IGA.

SECTION 7 Terms of Transfer.

7.1 Inspection/Environmental Site Assessment. This IGA is contingent upon approval by the Township of the condition of the Property as evidenced by an inspection/environmental site assessment conducted at the Township's expense and by contractor(s) selected by the Township, within fourteen (14) business days after the Village's acceptance of this IGA and a Title Commitment obtained by the Township at its own cost and expense. The Township shall indemnify, protect, defend and hold harmless the Village from and against any loss or damage to the Property caused by the acts or negligence of the Township, or the person(s) performing such inspection. This provision shall be deemed waived by the Township if written notice of the Township's disapproval is not served within the time specified and this IGA shall remain in full force and effect. The Township's failure to perform a site inspection within the fourteen (14) day timeframe provided for in the paragraph shall not invalidate this IGA.

7.2 Title/Survey Review. Within fourteen (14) business days after the Village's acceptance of this IGA, the Township shall obtain (a) a commitment for an ALTA owner's policy of title insurance showing the Village as owner of the Property in fee simple (the "Commitment"), including legible copies of all documents cited, raised as exceptions or noted in the Commitment (the "Title Documents"). The Township shall have the right to obtain an ALTA Survey of the Property showing such matters as determined by the Township in the exercise of its sole discretion, prepared by a surveyor of the Township's choice and at the Township's expense (the "Survey").

7.3 Title/Survey Approval. The Township shall have a period of ten (10) days from receipt of the later of the Survey and the Commitment ("Title Review Period") in which to review the Commitment, Title Documents and Survey and deliver to the Village, at the Township's election, such written objections as the Township may have to any matters contained therein ("Township's Objection Notice"; any of said objections listed on Township's Objection Notice are deemed the "Objectionable Exceptions"). If the Village is unable to cure any of said Objectionable Exceptions prior to the Closing Date, the Township shall have the right to either (a) terminate this Agreement by delivering written notice to the Village on or prior to the Closing Date, in which event, each party shall be released from further liability to the other (except such liability which expressly survives termination of the Agreement) or (b) the Township may consummate the transaction contemplated by this Agreement in accordance with the terms hereof, in which event, all exceptions to title listed in the Commitment and all matters contained in the Survey shall conclusively be deemed to constitute Permitted Exceptions, except for such matters as the parties have agreed will be removed or insured over by the Title Company on or before the Closing Date. Matters in the Commitment, Title Documents and Survey to which the Township either fails to make objection or, having made an objection, subsequently waives the objection shall be defined as the "Permitted Exceptions". Notwithstanding the foregoing, Permitted Exceptions shall not include "Mandatory Cure Exceptions". The term "Mandatory Cure Exceptions" shall be those exceptions that the Village is required to cure and shall include the following: (a) all standard exceptions unless the Township does not provide a current survey in which event the so-called "survey exceptions" may remain; (b) the Village's existing financing on the Property and any other mortgages except those arising through the Township; and (c) all mechanics' liens, contractors' liens and all other monetary liens or judgments of a definitive or ascertainable amount except such liens arising through the Township.

7.4 Clean Conditions. The Township shall have the right to inspect the Property and improvements prior to closing to verify that the Property, improvements and included personal property are in substantially the same condition as of the date of the Township's acceptance of this IGA, normal wear and tear excepted.

7.5 Code Violations. The Village warrants that neither the Village nor its agent has received notice of any zoning, building, fire and health code violations for the Property which exists on the date of this IGA from any governmental authority. The Village shall provide notice if it becomes aware of the existence of any code violations between the date of the Township's acceptance of this IGA and the closing date, the Village shall provide notice of the same to the Township.

7.6 Municipal Ordinances. The Parties shall comply with the terms of any of the Village's ordinances related to the transaction contemplated in this IGA and shall provide the Township with evidence of compliance with such ordinances at closing.

7.7 Reservation of Rights. The Parties agree that the Village shall reserve unto itself all utility or other easements and shall retain all rights for permanency or construction easements.

7.8 Revert Property to the Village. The Property shall be reverted and transferred back to the Village if the Township fails to construct the community building in conformity with the Purpose by January 1, 2037, and this IGA shall be null and void.

SECTION 8. Indemnification. To the fullest extent permitted by law, the Township shall indemnify, protect, defend and hold harmless the Village and its past and present officials (whether elected or appointed), trustees, employees, volunteers, insurers, directors, agents, officers, representatives, attorneys, independent contractors, successors or predecessors and any other party in any way related to the Village, and the Village's interest in any property (collectively, the "Village Parties"), from and against any and all claims, losses, obligations, liens, encumbrances, demands, liabilities, penalties, causes of action, costs and expenses (including orders, judgments, fines, forfeitures, amounts paid in settlement, reasonable attorneys' fees and court costs), deaths, injuries and damages (whether actual or punitive), whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or unliquidated, proximately occurring or alleged to have occurred in whole or in part in connection with the use of the Property, the intentional, willful or negligent acts or omissions of the Township or its past and present officials (whether elected or appointed), board members, employees, volunteers, insurers, directors, agents, officers, representatives, attorneys, independent contractors, successors or predecessors and any other party in any way related to the Township (collectively, the "Township Parties"), from the violation of any law or the rights of a third party by the Township or the Township Parties or this IGA.

To the fullest extent permitted by law the Village shall indemnify, protect, defend and hold harmless the Township and its past and present officials (whether elected or appointed), board members, employees, volunteers, insurers, directors, agents, officers, representatives, attorneys, independent contractors, successors or predecessors and any other party in any way related to the Township (collectively, the "Township Parties"), from and against any and all claims, losses, obligations, liens, encumbrances, demands, liabilities, penalties, causes of action, costs and expenses (including orders, judgments, fines, forfeitures, amounts paid in settlement, reasonable attorneys' fees and court costs), deaths, injuries and damages (whether actual or punitive), whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or

unliquidated, proximately occurring or alleged to have occurred in whole or in part in connection with the use of the Property, the intentional, willful or negligent acts or omissions of the Village and its past and present officials (whether elected or appointed), trustees, employees, volunteers, insurers, directors, agents, officers, representatives, attorneys, independent contractors, successors or predecessors and any other party in any way related to the Village, and the Village's interest in any property (collectively, the "Village Parties"), from the violation of any law or the rights of a third party by the Village or the Village Parties or this IGA.

This Section shall be interpreted as broadly as possible under state and federal law.

SECTION 9. Notices. All notices, demands, requests or other writings which any Party is required to, or may wish to, serve upon any other Party in connection to this IGA shall, except where specifically excepted herein, be in writing and shall be deemed given (a) upon delivery, if personally delivered or if sent by e-mail or facsimile transmission, to the Parties to be given such notice or other communication; (b) on the third business day following the date of deposit in the United States mail, if such notice or other communication is sent by certified or registered mail with return receipt requested and postage thereon fully prepaid; or, (c) on the business day following the day such notice or other communication is sent by reputable overnight courier, to the following:

If to the Township: Tom Shaughnessy, Supervisor
Antioch Township
1625 Deep Lake Road
Lake Villa, IL 60046

With a copy to: James C. Hartman, Township Attorney
Magee Hartman, P.C.
444 N. Cedar Lake Road
Round Lake, IL 60073

If to the Village: Scott Gartner, Mayor
Village of Antioch
874 Main Street
Antioch, Illinois 60002

With a copy to: James Vasselli, Village Attorney
Del Galdo Law Group, LLC
1441 S. Harlem Avenue
Berwyn, Illinois 60402

SECTION 10. Governing Law. This IGA shall be governed and construed in accordance with the laws of the State of Illinois. Venue and jurisdiction for any legal action arising out of or related to this IGA shall be exclusively fixed in the Lake County Circuit Court, Lake County, Illinois.

SECTION 11. Binding Effect; Construction.

A. After approval by the respective corporate authorities, this IGA shall be binding on each Party and its respective successors, including successors in office. This IGA is personal in nature and its assignment is prohibited.

B. This IGA shall be deemed and construed to be the joint and collective work product of the Parties and, as such, this IGA shall not be construed against a Party, as the otherwise purported drafter of same, by any court of competent jurisdiction and order resolving any inconsistency, any ambiguity, vagueness or conflict in the terms or provisions, if any, contained herein.

C. This IGA creates no rights, title or interest in any person or entity whatsoever (whether a third-party beneficiary thereof or otherwise) other than the Parties.

SECTION 12. Amendments. No amendments, changes, modifications, alterations or waivers of any term, provision or condition of this IGA shall be binding or effective for any purpose unless expressed in writing and adopted by each of the Parties hereto as required by law.

SECTION 13. Severability. The terms, conditions and provisions of this IGA shall be severable, and if any term, condition or provision is found to be invalid or unenforceable for any reason whatsoever, the remaining sections, subsections, terms, conditions and provisions shall remain in full force and effect, and shall not be effective by such determination, unless the IGA can no longer be performed by any Party.

SECTION 14. Counterparts. This IGA may be executed 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. Facsimile signatures shall be sufficient unless an original signature is required by either Party. Reproduction of this IGA and its signatures hereon shall be the equivalent of an original copy of this IGA.

SECTION 15. Headings. The headings of the articles, sections, paragraphs and subparagraphs of this IGA are inserted solely for convenience of reference and form no substantive part of this IGA nor should they be used in any interpretation or construction of any substantive provision of this IGA.

The undersigned parties have caused this INTERGOVERNMENTAL AGREEMENT to be executed by their duly designated officials.

Date: _____

VILLAGE: The Village of Antioch, Illinois, an Illinois municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

TOWNSHIP: The Township of Antioch, Illinois, an Illinois township

By: _____

Name: _____

Title: _____

SCHEDULE A

LEGAL DESCRIPTION OF PROPERTY BEING TRANSFERRED

To be determined and attached pursuant to the terms and conditions of this IGA.

SCHEDULE B

QUIT CLAIM DEED