

ORDINANCE NO. 2015-09

**AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND MAYOR TO ENTER INTO AN AGREEMENT WITH HILLIAR TOWNSHIP REGARDING THE PRESERVATION AND MAINTENANCE OF MEMORIAL PARK FOR USE BY VILLAGE RESIDENTS**

WHEREAS, the legislature for the State of Ohio with the passage of R.C. 9.482 has provided the means for local government collaboration regarding the provision of services;

WHEREAS, the Village has authority to provide for public parks and recreation facilities pursuant to R.C. 715.21;

WHEREAS, Memorial Park in Hilliar Township ("Township") has been and is a vital part of providing recreational, public gathering, athletic and other opportunities for the children and adult residents of the Village of Centerburg ("Village");

WHEREAS, the Centerburg Community Memorial Park ("Memorial Park") is adjacent to the Village and easily accessible by all Village residents;

WHEREAS, it is in the best interests of the Village and the Township to ensure that Memorial Park is maintained for mutual benefit of their residents;

**NOW THEREFORE, BE IT ORDAINED**, by the Council of the Village of Centerburg, Knox County, Ohio:

**Section 1:** That the Mayor and Village Administrator are hereby authorized to enter into the Maintenance Agreement with Hilliar Township in the form as attached hereto as Exhibit A, subject to the review and approval of the Hilliar Township Trustees.

**Section 2:** This Ordinance is hereby declared to be an emergency immediately necessary for the preservation of the public health, safety and welfare for the purpose of obtaining an agreement with Hilliar Township in advance of submitting the Village's R.C. 503.07 petition to the County Commissioners.

**WHEREFORE**, this Ordinance is declared an emergency and shall take effect and be in force from and after its passage and approval by the Mayor.

DATE PASSED May 4, 2015

ATTEST [Signature]  
CLERK OF COUNCIL

\_\_\_\_\_  
PRESIDENT OF COUNCIL

\_\_\_\_\_  
MAYOR

DATE APPROVED \_\_\_\_\_

Sponsored by Council Member David Beck

O-15-02B

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LEGAL COUNSEL

I hereby certify that the ordinance or a summary of the ordinance was published once a week for two consecutive weeks on May 29, 2015 and June 5, 2015 in the *Mount Vernon News* in conformance with the Ohio Revised Code.

\_\_\_\_\_  
CLERK-TREASURER

**VILLAGE OF CENTERBURG-HILLIAR TOWNSHIP**  
**MEMORIAL PARK MAINTENANCE AGREEMENT**

THIS AGREEMENT is entered into between Hilliar Township, Ohio ("Township") and the Village of Centerburg, an Ohio municipal corporation ("Village"), for the consideration and mutual benefits to be derived as set forth below.

WHEREAS, Village passed Ordinance 2015-09 authorizing Village to contract with the Township pursuant to R.C. § 9.482 for the maintenance and preservation of Memorial Park; and

WHEREAS, Township and Village recognize the benefit to both Township and Village in having available recreation facilities for the area residents, and particularly the facilities in Memorial Park (Knox County Auditor, Parcel No. 17-50009.000) (the "Park"); and

WHEREAS, pursuant to R.C. §715.21, Village, as an Ohio municipal corporation, has the authority to provide parks and recreational facilities for its residents; and

WHEREAS, Village desires to ensure that the Park is maintained for use by Village residents; and

WHEREAS, Village and Township have agreed, per respective resolutions of the respective Council and Trustees at public meetings to enter into this Agreement with each other;

IN WITNESS HEREOF, it is hereby mutually covenanted and agreed by and between Township and Village as follows:

1. Premises. Township is the owner of the Park which consists of approximately 12.97 acres of real estate located at 21 Johnstown Road, Village, Ohio 43011 (Knox County Auditor, Parcel No. 17-50009.000) (the "Premises"). Township agrees to lease on a non-exclusive basis to Village, and Village agrees to lease from Township, the Premises.

2. Purpose. This Agreement is to ensure that the Township maintains and preserves Memorial Park for use by Village and Township residents for the purpose of recreational and park facilities and for such other uses normally incidental thereto.

3. Term. The term of this Agreement shall be for a period of one year, effective beginning March 1, 2015 through February 28, 2016, without renewal unless subsequent action by Council. The Village's obligations under this Lease are contingent upon:

- A. The Township establishing and/or maintaining a "Memorial Park Maintenance Fund" pursuant to R.C. § 5709.05(F), or an existing maintenance fund dedicated solely to maintenance of Memorial Park; and
- B. Township budgeting and appropriating sufficient funds to be paid to the "Memorial Park Maintenance Fund" or an existing fund dedicated solely to maintenance of the Memorial Park.

4. Payment of Village Contribution.

- A. The Village contribution to the Memorial Park Maintenance Fund shall be the total amount of \$1,500, payable in two equal installments of \$750 each to the Township on or before the last day of May and the last day of November. *(In determining the Village's contribution amount, the Village gave consideration to the revenue received by the Township from lease of the Township Building to the Fire District, for which Village residents made an approximately 50% contribution, and the Village considers that COJFD rent payment, a portion of the Village's contribution for these purposes.)*
- B. In addition to this payment, and as additional consideration to Township, Village shall consider requests from Township for in-kind assistance in the event an extraordinary need arises, such as a significant storm event or a critical piece of equipment necessary for the Park's maintenance breaks down. Such assistance might include labor, loaning of equipment, or sharing of other resources.

5. Access. Village residents may access the Premises in accordance with Park operating hours and shall continue to receive the same rights and benefits as Township residents provided that Village makes payment to Township in conformance with Section 4 above.

6. Use of Premises. The use of the Premises under this Agreement is limited to the "Purpose" identified in Paragraph 2 of this Agreement. The rights granted hereunder to Village are non-exclusive and Township shall have the right to permit other uses of the Premises so long as such uses are not contrary to, or do not interfere with, the use and enjoyment by Village's residents to any greater degree than the Township residents for said time period. Without limiting the foregoing, examples of permitted interferences are the July 4<sup>th</sup> celebration or Old-Time Farming Festival, which make use of the Park. Neither Village nor Township shall have any right to use the Premises or access areas in any way, which materially interferes with the use of adjacent property or the other's authorized use of the Premises.

7. Remedy for Township's Failure to Properly Maintain and Preserve Memorial Park. If in the opinion of the Village, the Township is failing to maintain Memorial Park in conformance with reasonable standards based on prior years, the Village shall provide written notice to the Township specifying the Village's claim of failure to maintain. Thereafter, the Township and Village shall confer regarding the Village's claim, and use their best efforts to address the Village's concerns. In the event that the Township would grossly negligent in failing to properly maintain Memorial Park, and does not cure said failure within 30 days of receiving written notice from the Village, then the Village may terminate this Agreement by providing written notice and the Township will be obligated to return all contributions received by the Township pro rata for the term through the date of the Township's receipt of the notice for that calendar year.

8. No Interference with Use by Village Residents. The Township shall not enact any rules or permit any use of Memorial Park that in any way interferes with the use of Memorial Park by Village residents, and regarding use of the Park, the Village residents shall receive equal rights and privileges to any Township resident. If an interference should occur in violation of this Agreement, the Village shall deliver written notice to the Township. In the event any such

interference does not cease within five (5) business days, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the Village shall have the right to bring an action to enjoin such interference or to terminate this Agreement immediately.

7. Termination. This Agreement shall remain in force for the term, unless terminated pursuant to the terms set forth above or herein.

A. Upon Default of Village: Township may terminate this Agreement, without penalty or further liability, upon thirty (30) days written notice to Village, if Village fails to cure a default for payment of amounts due under this Agreement within that 30-day period, or if Village defaults, other than for non-payment and fails to cure such default within that 30-day period; *provided, however*, Village shall not be deemed to be in default for non-payment if Township has failed to establish a fund for maintenance of the Park pursuant to R.C. §5709.05(F).

8. Encumbrances. Village shall not encumber the Premises.

9. Improvements, Fixtures and Personal Property. Village shall make no improvements to the Premises without the written permission of the appropriate authority of the Premises as designated by Township.

10. Maintenance/Repairs. At all times during the Lease term, Township, at its own expense (which includes expenditures from the fund established under R.C. 5709.05(F) per Paragraph 4 above), shall maintain the Premises in accordance with all applicable laws, ordinances, rules, regulations and requirements of governmental authorities, which all shall be in conformance with Township's past practice during the five (5) years preceding this Agreement. Village shall not be responsible for the repair of any damage or injury to the Premises, even if caused by Village residents. The Parties acknowledge that Village has no legal obligation to provide payment to Township for maintenance of the Premises, other than as agreed herein.

11. Signs. Village shall not place any signs or symbols on the Premises, or upon any exterior or interior part of any structure on the Premises, without the express written approval of Township.

12. Taxes and Assessments. Township agrees to pay all taxes and assessments which are the result of the use of the Premises and/or which may hereafter become a lien on the interest of the Village.

13. Utilities. Township is responsible for and agrees to pay for all utilities (including, but not limited to: telephone, internet, electricity, water, sewer and natural gas).

14. Liens. Nothing in this Agreement shall be deemed to make Village the agent of Township for purposes of construction, repair, alteration, or installation of structures, improvements, equipment or facilities on the Premises. Village acknowledges that Township may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by Village. Village shall not encumber the Premises with any liens.

15. Insurance. Both parties shall secure and maintain in effect a policy of general liability insurance issued by an insurer licensed to conduct business in the State of Ohio or an authorized municipal insurance pool covering activities at the Park. The insurance shall provide liability coverage for any and all claims of bodily injury, property damage, and personal injury arising from the area residents' use of the Premises, which is the subject of this Agreement. The insurance policy required by this Section shall provide coverage of no less than \$1,000,000 combined single limit of liability per occurrence, with a general aggregate limit of no less than \$1,000,000 per policy period. Coverages under said policy shall be triggered on an "occurrence" basis.

Further, each Party shall provide the other Party with a certificate of insurance naming the other Party as an additional insured, reflecting the insurance coverage required by this Section within ten (10) business days of the execution of this Agreement.

16. Hold Harmless; Indemnification. To the extent permitted by law, Township, its successors or assigns, will protect, and hold harmless Village, its council members, officers, employees and authorized agents from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of Township, its assigns, agents, contractors, licensees, invitees, employees, trustees, officers or any person whomsoever, arising out of or in connection with any acts or activities authorized by this Agreement or arising out of or in connection with any use of the Park. This indemnification obligation shall be limited solely to acts or omissions that occur during the term of this Agreement. This indemnification provision shall survive the termination or expiration of this Agreement.

17. Nondiscrimination. Village, for itself, and its successors and assigns, and as a part of the consideration hereof, and Township, for itself, and its successors and assigns, and as a part of the consideration hereof, do hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of R.C. § 4112.01 as to the Premises.

18. Assignment.

A. Neither this Agreement, nor any rights created by it, may be assigned, sublet, or transferred without written permission from Township. Any such assignment shall be in writing on a form approved by Township and shall include an assumption of this Agreement by the assignee.

B. Should Township propose to sell, transfer, or otherwise convey all or any part of Memorial Park that is subject to this Agreement to any transferee other than the Village Joint Recreation District, the Village shall have a right of first refusal to accept such transfer under the same terms which Township is offering to the proposed transferee, subject to the Township's compliance with any statutory obligations regarding transfer of real estate.

19. Continued Use of Premises. Upon termination of this Agreement, Village residents shall continue to have rights to use the Premises in the same manner as any other non-Township residents.

20. Modifications. This instrument contains all the agreements and conditions made between the Parties hereto and may not be modified orally or in any manner other than by an

agreement in writing signed by all Parties thereto, subject to approval at a public meeting. No failure on the part of either Party to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by Township, unless in writing, shall discharge or invalidate such covenant or provisions or affect the right of either Party to enforce the same in the event of any subsequent breach or default.

21. Interpretation. This Agreement shall be construed in accordance with the laws of the State of Ohio. The titles to paragraphs or sections of this Agreement are for convenience only and shall have not effect on the construction or interpretation of any paragraph hereof.

23. Invalid Provisions. If any provision or condition of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

24. Venue. The Parties agree that the venue of any action or suit concerning this Agreement shall be in the Knox County Common Pleas Court, and all actions or suits thereon shall be brought therein unless the Parties mutually agree otherwise in writing.

25. Notices. Except as otherwise designated in this Agreement, wherever in this Agreement written notices are to be given or made, they will be delivered or sent by certified mail addressed to the parties at the address listed below unless a different address shall be previously designated in writing and delivered to the other party. Notice shall be deemed effective as of the delivery date. Village agrees to accept service of process or certified mail at the address provided for herein, provided such address is located in the State of Ohio.

VILLAGE OF CENTERBURG  
Philip Lohmeyer, Village Administrator  
Village Municipal Building  
8 N. Clayton St.  
Village, OH 43011

HILLIAR TOWNSHIP  
Township Clerk  
5120 Columbus Road  
Village, OH 43011

26. Authority. Each person executing this Agreement on behalf of the Parties specifically warrants and represents that he or she has full power and authority to execute this Agreement on behalf of such Party through actions approved at a public meeting.

27. Totality of Agreement. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by Village or Township, except to the extent that the same are expressed in this Agreement. It is further understood that this Agreement shall not be valid and binding upon either Party unless and until signed and approved by a duly authorized representative of Township and Village.

IN WITNESS WHEREOF, the Parties hereto have executed this NON-EXCLUSIVE RECREATIONAL FACILITIES LEASE/USE AGREEMENT as of the last day and year written below.

**THE VILLAGE OF CENTERBURG,**  
an Ohio municipal corporation

By: \_\_\_\_\_  
Philip Lohmeyer, Village Administrator

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Diana Stockmaster, Mayor

Date: \_\_\_\_\_

**HILLIAR TOWNSHIP, OHIO**

By: \_\_\_\_\_  
Don McCracken, Trustee

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Larry Hawkins, Trustee

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Roger Hall, Trustee

Date: \_\_\_\_\_