

LAND EXCHANGE AGREEMENT

THIS LAND EXCHANGE AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2019 (the "Effective Date") by and between the GERMANTOWN MUNICIPAL SCHOOL DISTRICT ("School District" or "GMSD") and the CITY OF GERMANTOWN, TENNESSEE ("City").

WITNESSETH:

WHEREAS, the City is the owner of a certain parcel of land south of Houston High School in Germantown, Shelby County, Tennessee, consisting of approximately 24.88 acres, and to which is assigned tax parcel number G0232 00331, and which is more particularly described on **Exhibit "A"** attached hereto (the "City Parcel");

WHEREAS, the City desires to retain ownership of the southwestern corner of the City Parcel for a public park (the "Park Parcel"), the exact location and acreage of the Park Parcel to be verified by survey as hereinafter set forth;

WHEREAS, the City desires to convey to GMSD that portion of the City Parcel that is not the Park Parcel (the "First Parcel");

WHEREAS, GMSD is the owner of a certain parcel of land on Forest Hill Irene Road in Germantown, Shelby County, Tennessee, consisting of approximately 38.12 acres, and to which is assigned tax parcel ID G0243 00428C (the "GMSD Parcel");

WHEREAS, GMSD desires to convey to the City the easternmost approximately 15 acres of the GMSD Parcel (the "Second Parcel"), the exact location and acreage of the Second Parcel to be verified by survey as hereinafter set forth;

WHEREAS, the Parties desire to exchange the First Parcel and the Second Parcel for one another, with GMSD desiring the First Parcel for recreational and sports uses, and with the City desiring the Second Parcel for public uses including a park and the location of public utilities;

WHEREAS, the First Parcel and the Second Parcel are deemed to be of equal fair market value; and

WHEREAS, the Parties deem it to be in their respective best interests, and in the best interests of the residents of the City, to enter into this Agreement exchanging the First Parcel and the Second Parcel on the terms set forth herein.

NOW, THEREFORE, in consideration for the foregoing recitals, and the mutual covenants and promises contained herein, the sufficiency and receipt of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

SECTION ONE: CONVEYANCE BY THE CITY

1.1 Subject to the terms and conditions set forth in this Agreement, the City hereby agrees to convey to GMSD by special warranty deed (the "First Parcel Deed"), good and merchantable title in and to the entire fee simple interest in and to the First Parcel, together with all rights, easements and appurtenances pertaining to said real property, if any, including all improvements, buildings, fixtures and structures situated on said real property, if any. The City and GMSD agree that the final configuration, the exact location and metes and bounds description of the First Parcel (and of the Park Parcel) will be determined by a boundary survey to be procured and paid for by the City (the "First Parcel Survey"). Upon completion of the First Parcel Survey, the metes and bounds descriptions of the Park Parcel and the First Parcel as shown on the First Parcel Survey shall be the descriptions of such parcels for all purposes thereafter including, without limitation, on the First Parcel Deed.

1.2 The City shall retain in the First Parcel Deed, or, at City's option, GMSD shall grant to the City at Closing, easements over the parcels owned by GMSD adjacent to the Park Parcel or First Parcel for ingress and egress by the City and its employees and agents over such GMSD parcel. Any such property claimed by, or subject to, an easement in favor of the City must be in a location and scope approved by GMSD. In the event the Parties cannot agree on the location and scope, then this Agreement shall be null and void.

1.3 Prior to Closing, the City shall be allowed to remove benches, garbage cans, picnic tables, and grills from the First Parcel. (Benches permanently affixed to the ground shall remain with the First Parcel and shall not be removed.)

SECTION TWO: MATTERS RELATING TO THE FIRST PARCEL

2.1 The City warrants and represents to GMSD that:

- (a) There are no unrecorded leases, encumbrances, easements, claims or easements or prescriptive rights upon or concerning the First Parcel or any part thereof;
- (b) There is no litigation, arbitration, or administrative proceeding pending or threatened against the City or the First Parcel that might have the effect of preventing or hindering the exchange of or the use/development of the First Parcel for recreational and/or sports purposes;
- (c) The City has the unrestricted right to sell the First Parcel to GMSD, and observe and perform this Agreement, and no such actions will violate or breach any agreement to which the City is a part or to which it may be bound;
- (d) The City has no knowledge of any existing, threatened, or contemplated action, circumstances, or conditions (including, but not limited to, subsurface conditions)

which would interfere with the development or use of the First Parcel as a park, recreational area, or softball field;

- (e) The First Parcel is in full compliance with all applicable statutes, ordinances, rules, and regulations (federal, state, county, and municipal), including, without limitation, all zoning and subdivision restrictions and which would permit the First Parcel to be used as a park, recreational area, or softball field;
- (f) No hazardous wastes or substances have been dumped, deposited, or buried on the First Parcel, and the City has no knowledge of any leaks of petroleum or hazardous materials affecting the First Parcel;
- (g) The First Parcel has an assured water supply sufficient to permit its development and use in accordance with all governmental requirements;
- (h) Gas and electric services are extended and furnished by Memphis Light, Gas and Water division and not by the City;
- (i) All representations and warranties contained herein are true and correct, and shall be true and correct as of Closing, with the same force and effect as if made at such time, and each shall survive Closing;
- (j) The undersigned representative of the City has been duly authorized to execute this Agreement on behalf of the City.

SECTION THREE: CONVEYANCE BY GMSD

3.1 Subject to the terms and conditions set forth in this Agreement, GMSD hereby agrees to convey to the City by special warranty deed (the "Second Parcel Deed"), good and merchantable title in and to the entire fee simple interest in and to the Second Parcel, together with all rights, easements and appurtenances pertaining to said real property, if any, including all improvements, buildings, fixtures and structures situated on said real property, if any. The City and GMSD agree that the final configuration, the exact location and metes and bounds description of the Second Parcel will be determined by a boundary survey to be procured and paid for by GMSD (the "Second Parcel Survey"). Upon completion of the Second Parcel Survey, the metes and bounds descriptions of the Second Parcel as shown on the Second Parcel Survey shall be the descriptions of such parcels for all purposes thereafter including, without limitation, on the Second Parcel Deed.

3.2 In addition to the conveyance of the Second Parcel by GMSD to the City, at Closing GMSD shall grant to the City a fifty (50') wide ingress and egress easement over GMSD's property for vehicular and pedestrian access by the City and its employees and agents between the Second Parcel and Forest Hill-Irene. Any such easement must be in a location and scope approved by GMSD. In the event the Parties cannot agree on the location and scope, then this Agreement shall be null and void.

SECTION FOUR: MATTERS RELATING TO THE SECOND PARCEL

4.1 GMSD warrants and represents that:

- (a) There are no unrecorded leases, encumbrances, easements, claims or easements or prescriptive rights upon or concerning the Second Parcel or any part thereof;
- (b) There is no litigation, arbitration, or administrative proceeding pending or threatened against GMSD or the Second Parcel that might have the effect of preventing or hindering the exchange of or the use/development of the Second Parcel for public use and improvements, including, without limitation, public utilities and a park;
- (c) GMSD has the unrestricted right to sell the Second Parcel to the City, and observe and perform this Agreement, and no such actions will violate or breach any agreement to which GMSD is a part or to which it may be bound;
- (d) GMSD has no knowledge of any existing, threatened, or contemplated action, circumstances, or conditions (including, but not limited to, subsurface conditions) which would interfere with the development or use of the Second Parcel for public utilities or a park;
- (e) The Second Parcel is in full compliance with all applicable statutes, ordinances, rules, and regulations (federal, state, county, and municipal), including, without limitation, all zoning and subdivision restrictions and which would permit the Second Parcel to be used for public utilities or a park;
- (f) No hazardous wastes or substances have been dumped, deposited, or buried on the Second Parcel, and GMSD has no knowledge of any leaks of petroleum or hazardous materials affecting the Second Parcel;
- (g) The Second Parcel has an assured water supply sufficient to permit its development and use in accordance with all governmental requirements;
- (h) Gas and electric services are extended and furnished by Memphis Light, Gas and Water division and not by the City;
- (i) All representations and warranties contained herein are true and correct, and shall be true and correct as of Closing, with the same force and effect as if made at such time, and each shall survive Closing;
- (j) The undersigned representative of GMSD has been duly authorized to execute this Agreement on behalf of GMSD.

4.2 On or before the Closing, the City shall reimburse GMSD for the cost of installing/laying the underground water pipe that presently is located in and under the Second Parcel (the "Water Pipe"). The Parties acknowledge that the total cost to be reimbursed to GMSD is \$_____ [approximately \$232,000]. GMSD shall grant to the City a utility easement for the Water Pipe in a form satisfactory to the City. City shall be responsible for all maintenance, repairs and upkeep of the Water Pipe. In the event of any damage resulting from either the Water Pipe or its maintenance, repair or upkeep, City shall be responsible for all repairs, including restoration of the Second Parcel to its previous condition.

SECTION FIVE: CONDITIONS OF PARCELS

5.1 Prior to Closing, neither the City nor GMSD shall permit or suffer any changes to be made in the parcels to be conveyed hereby that would materially affect the value of such parcels or the ability to use and develop them. The City and GMSD shall not permit or suffer any waste to such parcels, and the City and GMSD shall keep such parcels free and clear of all claims of adverse possession and prescriptive rights of any kind.

SECTION SIX: INSPECTIONS

6.1 By executing this Agreement, GMSD authorizes the City to request engineers, surveyors and environmental consultants to inspect and audit the Second Parcel, and hereby grants to said professionals and their agents full entry onto the Second Parcel. The City shall repair any damage to the Second Parcel of any type, kind or nature caused by the City, any of its agents, representatives, contractors, or engineers on the Second Parcel prior to the Closing Date, such that the Second Parcel shall be returned to GMSD in the same condition as on the date of execution of this Agreement, ordinary wear and tear excepted in the event this Agreement does not close.

6.2 By executing this Agreement, the City authorizes GMSD to request engineers, surveyors and environmental consultants to inspect and audit the First Parcel, and hereby grants to said professionals and their agents full entry onto the First Parcel. GMSD shall repair any damage to the First Parcel of any type, kind or nature caused by GMSD, any of its agents, representatives, contractors, or engineers on the First Parcel prior to the Closing Date, such that the First Parcel shall be returned to the City in the same condition as on the date of execution of this Agreement, ordinary wear and tear excepted in the event this Agreement does not close.

SECTION SEVEN: CONDITIONS PRECEDENT

7.1 The obligations of the City and GMSD to close this transaction are each subject to satisfaction of each of the following conditions precedent on or before the date of Closing.

(a) The Board of Mayor and Alderman of the City of Germantown ("BMA") shall have formally approved this Agreement and all of the terms and conditions contained herein.

(b) GMSD shall have formally approved this Agreement and all of the terms and conditions contained herein.

(c) All matters affecting the title, condition and use of the First Parcel as disclosed by, among other things, the Title Commitment, the First Parcel Survey, inspection, soil testing, and an environmental audit shall have been approved by GMSD.

(d) All matters affecting the title, condition and use of the Second Parcel as disclosed by, among other things, the Title Commitment, the Second Parcel Survey, inspection, soil testing, and an environmental audit shall have been approved by the BMA.

SECTION EIGHT: BROKERS

8.1 The Parties agree that no broker or agent is responsible for bringing about the transactions set forth herein and that no commission is to be paid in connection therewith. In the event of any such claim for broker's, agent's or finder's fee or commission in connection with the negotiation, execution or consummation of this transaction, the Party upon whose alleged statement, representation or agreement such claim or liability arises shall indemnify, hold harmless and defend the other Party from and against such claim and liability, including without limitation, reasonable attorney's fee and court costs. The terms and provisions of this Section shall survive the Closing.

SECTION NINE: CLOSING

9.1 The Closing shall take place on or before the ____ day of _____, 2019, at the offices of Burch, Porter & Johnson, PLLC at 130 N. Court Ave., Memphis, Tennessee, at 10:00 o'clock a.m., or at such other time and place as shall be designated by the Parties, or unless extended by the mutual agreement of the Parties to satisfy the conditions precedent hereinabove set forth. The City shall deliver to GMSD at Closing the First Parcel Deed with the usual covenants conveying good and merchantable title to the First Parcel executed by a duly authorized representative of the City and acknowledged. Such deed shall convey title to the First Parcel in fee simple free of all encumbrances except as set forth therein. GMSD shall deliver to the City at Closing the Second Parcel Deed with the usual covenants conveying good and merchantable title to the Second Parcel executed by duly authorized representatives of GMSD and acknowledged. Such deed shall convey title to the Second Parcel in fee simple free of all encumbrances except as set forth therein.

SECTION TEN: REMEDIES

10.1 If a Party hereto is in default of any obligation hereunder, the other Party may elect either of the following remedies, but no other remedy shall be available:

- (a) Specific performance of this Agreement against the defaulting Party, or
- (b) Termination of this Agreement.

SECTION ELEVEN: MISCELLANEOUS

11.1 Rents and any taxes for the current year, if applicable, are to be prorated as of the date of Closing, and all prior liens are to be paid by the respective owners of the parcels prior to Closing.

11.2 Any improvements are to be delivered in as good condition as they are in as of the date of this Agreement, ordinary wear and tear excepted, but in the event of destruction by fire or otherwise, the conveying Party shall have no obligation to repair the improvements so destroyed. Any insurance proceeds or other claims arising out of any such event of destruction shall be for the exclusive benefit of the Party obtaining such insurance coverage.

11.3 The City shall pay for the preparation of the deed conveying title to the First Parcel and for the title search or abstract pertaining to the First Parcel. The City shall pay for the recordation of the deed conveying title to the Second Parcel and for the title examination and title insurance pertaining to the Second Parcel.

11.4 GMSD shall pay for the preparation of the deed conveying title to the Second Parcel and for the title search or abstract pertaining to the Second Parcel. GMSD shall pay for the recordation of the deed conveying title to the First Parcel and for the title examination and title insurance pertaining to the First Parcel.

11.5 Each Party shall have the right of access to the parcel it is to acquire hereby to make any inspections, tests, surveys, and studies that such Party may deem appropriate.

11.6 Failure on the part of any Party to complain of any act or failure to act by the other Party or to declare the other Party in default, regardless of how long such failure continues, shall not constitute a waiver of such Party's rights hereunder. Any extension, amendment, or waiver affecting this Agreement must be in writing and signed by all Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions contained herein, nor shall any waiver constitute a continuing waiver.

11.7 The Parties agree to fully and promptly cooperate with each other in obtaining any necessary approvals and agrees to duly sign all documents necessary to accomplish the above referenced approvals and permits. The City, and the Board agree that, upon the request of the other Party, each will take all such further actions, and deliver such additional documents as may be reasonably required to effectuate the transaction as contemplated by this Agreement. The terms and provisions of this Section shall survive the Closing.

11.8 This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

11.9 Except as specified herein, this Agreement contains the entire agreement of the Parties and shall supersede any prior written or oral agreements or understandings.

11.10 This Agreement may only be altered, modified, or amended upon the written consent and agreement of both Parties hereto duly adopted as required by law.

11.11 Tennessee law shall govern this Agreement and any litigation, claim, hearing, or suit regarding this Agreement shall be held exclusively in Shelby County, Tennessee. The provisions of this Agreement are severable in that should any provision be held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforceability of the other provisions hereof shall not be affected, but they shall remain in full force and effect.

SECTION TWELVE: NOTICE

12.1 Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if personally delivered or sent by United States certified mail, return receipt requested, addressed as follows:

If to the City: City Administrator
 City of Germantown, Tennessee
 1930 South Germantown Road
 Germantown, Tennessee 38138

With a copy to: Burch, Porter & Johnson, PLLC
 130 N. Court Ave.
 Memphis, TN 38103
 Attn: Josh Lawhead

If to GMSD: Josh Cathey, COO
 Germantown Municipal School District
 6685 Poplar Ave. #202
 Germantown, TN 38138

With a copy to: Lewis Thomason
 One Commerce Square, 29th Floor
 40 S. Main St.
 Memphis, TN 38103
 Attn: Cheryl Ramage Estes

12.2 The City and GMSD shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other Party.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO LAND EXCHANGE AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

GMSD:

CITY:

GERMANTOWN MUNICIPAL SCHOOL DISTRICT
By: Jason Manuel
Title: Superintendent

CITY OF GERMANTOWN, TENNESSEE
By: Honorable Mayor Mike Palazzolo
Title: Mayor, City of Germantown

ATTEST:

By: _____

Approved as to form:

John R. McCarroll, III, City Attorney