

LAND EXCHANGE AGREEMENT

This Land Exchange Agreement (“Agreement”) is made by and between the Board of Education, Alamogordo Public Schools, the governing body of a New Mexico local political subdivision, hereinafter referred to as “APSD” or “District”, and the CITY of Alamogordo a local New Mexico municipal corporation , hereinafter referred to as the “CITY”, as follows:

RECITALS

A. APSD has a need to acquire real property and to construct a new public school to serve District needs and to replace the currently owned Chaparral Middle School site located at 1401 College Ave., Alamogordo, New Mexico, consisting of approximately 19.622 ac. +/- with improvements, (the “APSD Site”) which no longer meets the District’s needs and is not economically feasible to renovate to current state adequacy standards. The APSD has been approved by the PSFA to demolish the improvements on the APSD Site and the facilities are not available for lease to a District Charter School within the contemplation of the Charter Schools Act. A current survey of the APSD Site is attached hereto as Exhibit “A” and incorporated by reference.

C. The CITY owns the approximately 24.959 acres +/- of unimproved land located at Fairgrounds Rd., Alamogordo, New Mexico (the “CITY Parcel”). A current survey of the City Parcel is attached hereto as Exhibit “B” and incorporated by reference.

A. The APSD has determined that the City Parcel is suitably located and of suitable size for acquisition and construction of a new public District school. The CITY has determined that the APSD Site and improvements would be suitable for CITY purposes. The CITY has agreed to convey the CITY Parcel to APSD and accept the APSD Site as consideration in full for the conveyance subject to the remedial actions contemplated in Paragraph 3 (a) and (b) below. APSD has agreed to convey the APSD Site to the CITY in exchange for the CITY Parcel, subject to approval by the State Board of Finance, and accept the conveyance of the CITY Parcel as consideration in full for the APSD Site.

A. Subject to the State Board of Finance’s approval of the conveyance of the APSD Site to the CITY, the parties have agreed to an exchange of the APSD Site and the CITY Parcel (referred to, collectively, herein as the “Parcels”); in accordance with the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of these premises, the mutual covenants and provisions contained herein and other good and valuable consideration, the parties agree as follows:

1. Due Diligence Review.

a. Before submitting the exchange to the Board of Education, APSD inspected the CITY Parcel and investigated the historical uses of the CITY Parcel. The City acquired a larger parcel, of which the City Parcel is a portion, in 1946. Since then the City Parcel has not been used for manufacturing or commercial purposes but has been vacant and used as an accessory recreational parcel to municipal athletic fields. APSD has obtained and reviewed a current Environmental Phase I analysis of the City Parcel and has concluded that there are no environmental indicators requiring a more extensive environmental analysis or that would require remediation in order to permit the construction of a public school on the City Parcel. APSD has reviewed title to the City parcel and determined that it is acceptable.

b. The City has had the opportunity to obtain such inspections of the APSD Site as it deemed necessary or advisable to evaluate the environmental suitability and other suitability factors of the APSD Site and has reviewed the title of the APAD Site. Based on its inspections and review, the City has determined the APSD Site is acceptable.

2. State Board of Finance. The conveyance of the APSD Parcel to the CITY in exchange for the CITY Parcel, is subject to approval by the State Board of Finance pursuant to § Section 13-6-2.1, NMSA 1978. Therefore, exchange of the Parcels is expressly conditioned upon that approval being granted by the State Board of Finance. APSD shall submit the exchange to the State Board of Finance for approval, as soon as is practicable. The CITY agrees to cooperate with APSD in order for APSD to obtain State Board of Finance approval. Without limiting the foregoing, the CITY agrees that the City Manager or his designee will attend the meeting of the State Board of Finance at which the exchange is heard, in order to answer any questions that the Board of Finance Members may have.

3. Exchange. Subject to State Board of Finance approval,

(a) APSD hereby agrees to acquire from the CITY and the CITY hereby agrees to grant and convey to APSD by means of a statutory form Quitclaim Deed, the real estate located in Otero County, New Mexico identified herein as the CITY Parcel and more specifically described on Exhibit B. The conveyance of the CITY Parcel to APSD does not include any well or ground water rights. However, the City Parcel is within the City's municipal water and sewer distribution boundaries and the City has a sprinkler system serving the City Parcel with non-potable water and has agreed to supply the City Parcel with potable water and sewer service sufficient for the proposed public school upon the APSD's acquisition of the City Parcel.. APSD acknowledges and agrees that it will be responsible for the cost, if any, of extending City water and sewer distribution lines to the boundary of the City Parcel.

(b) In consideration of CITY's conveyance of the CITY Parcel to APSD, APSD agrees to grant and convey to the CITY, by means of a statutory form Quitclaim Deed, the real estate located in Otero County, New Mexico identified herein as the APSD

Site and more specifically described on Exhibit A. APSD further agrees that as part of its responsibility to demolish the existing improvements, it will remove all debris from the APSD Site and will install piping for an in ground sprinkler system for a cost not to exceed Two Hundred Thousand Dollars, (\$ 200,000.00) including applicable gross receipts tax but subject to the sufficiency of appropriations. APSD further agrees that it will be responsible for the cost of a traffic signal at the intersection of Fairgrounds Rd. and Pecan Dr. as part of its new facility construction costs if a traffic study reflects the need for a signal light. The City acknowledges and agrees it will be responsible for the cost, if any, of extending non-potable water distribution lines to the boundary of the APSD Site for landscaping and athletic field irrigation and a signal light at Fairgrounds Rd. and Florida Ave..

4. Equivalency of Exchange Value. The APSD Parcel was acquired in 1966 and 1977 in two separate transactions and is currently appraised at \$345,000, (\$17,500/ac.) including improvements, The CITY Parcel was acquired in 1985 as part of a larger parcel and the larger parcel is currently appraised at \$ 325,000 for 24.959 acres (\$13,000/ac.).. APSD has determined that the costs of acquiring additional land and constructing a new facility on the City Parcel will result in significant cost savings over any reconstruction or renovation of the APSD Site when the changes in school population and future growth are factored in. In addition, APSD is acquiring more acreage which will allow for more flexible planning for future expansion. As a consequence, APSD and the City have therefore concluded that APSD Site is approximately equivalent in value to the CITY Parcel.

5. Closing.

(a) CITY's Obligations at Closing. On the Closing Date, CITY shall deliver to APSD all of the following:

(i) CITY Deed. A Quitclaim Deed in such form as will convey to APSD title to the CITY Parcel, executed and acknowledged by the CITY.

(b) APSD' Obligations at Closing. On the Closing Date, APSD shall deliver to the City all of the following:

(i) APSD Deed. A Quitclaim Deed in such form as will convey to the CITY title to the APSD Site, executed and acknowledged by the APSD.

c) Other Documents. The City and APSD agree to execute and deliver to the other party all other documents expressly or implicitly contemplated by this Agreement to effectuate its intent.

(d) Closing Date: The Closing date shall be the fifth (5th) business day following approval of the exchange by the Board of Finance unless a later date is set by mutual agreement of the parties.

6. As-Is. Subject to the obligations of APSD in paragraph 3 (a) and (b). above, and the City's obligation in paragraph 3 (b). above, the Parcels are conveyed "as-is" without any representation or warranty whatsoever. Without limiting the foregoing, the parties make no representation as to the suitability of a Parcel for the intended use by the party to be conveyed the Parcel. As a material part of the consideration for this Agreement, each party agrees to accept the Parcel conveyed to it on an "as is" and "where is" basis, with all faults and to rely only on its own investigations to determine the condition and suitability of the Parcel it is acquiring under this Agreement.

7. Possession. As of the Closing Date, the CITY shall deliver possession of the CITY Parcel to APSD, and APSD shall deliver possession of the APSD Site to the CITY.

8. Full Compensation. Each party hereby agrees that the Parcel received in this exchange as herein provided, constitutes full compensation for its interests in the Parcel conveyed to the other party.

9. Nonappropriation.

- a. In accordance with the New Mexico Constitution, including Article IX, Sections 11 and 12, if the performance of any of APSD's obligations under this Agreement, whether conditional or unconditional, require the expenditure of funds other than in the current school year for APSD, then APSD's obligations to perform are contingent upon sufficient appropriations being made by the Legislature and the encumbrances and authorizations for the expenditure of funds for the performance of those obligations by APSD being duly obtained ; and
- b. if the performance of any of the City's obligations under this Agreement, whether conditional or unconditional, require the expenditure of funds other than in the current fiscal year for the CITY, then the CITY's obligations to perform are contingent upon sufficient appropriations being made by the City Council subject to approval by the Department of Finance.
- c. If the APSD or the CITY determines that it does not have sufficient appropriations to perform its obligations under this Agreement in the upcoming school year, with respect to APSD, or the upcoming fiscal year, with respect to the CITY, then the APSD or the CITY, as applicable, may terminate this Agreement by giving thirty (30) days prior written notice to the other of the event of non-appropriation. . Such termination shall not nullify either party's obligation to pay for such work as has been performed prior to such notice termination unless otherwise modified in writing by the parties. Each party's decision as to whether sufficient authorizations and appropriations are or have been made in any fiscal year shall be final.

10. Miscellaneous.

(c) Time is of the essence of this Agreement. The term “days” shall mean calendar days unless otherwise stated. If the date or expiration of a time period set for performance under this Agreement falls on a Saturday, Sunday or federally recognized holiday the time for performance shall be extended to the next day that is not a Saturday, Sunday or federally recognized holiday.

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

(e) This Agreement constitutes the entire Agreement between the parties hereto with respect to the Parcels and there are no agreements, understandings, warranties, or representations between them except as set forth herein.

(f) This Agreement is expressly conditioned upon approval being granted by the State Board of Finance. APSD shall submit this Agreement to the State Board of Finance for approval as soon as is practicable. The parties agree to cooperate in executed such amendments as may be required in order for APSD to obtain State Board of Finance approval. In the event such approval is not granted, this Agreement shall be null and void without penalty to either party.

(g) This Agreement cannot be amended except in writing, and executed by APSD and CITY and approved by the State Board of Finance. Any verbal agreement will be void. In the event modifications to this Agreement are required as a condition of approval by the Board of Finance, the parties agree to cooperate in effectuating such modifications.

(h) Headings in this Agreement are for convenience only and are not substantive terms or intended to provide an interpretation of the terms of this Agreement. The recitals set forth above are incorporated herein as substantive provisions in this Agreement.

(i) This Agreement is made solely for the benefit of APSD and the City, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement, except as otherwise specifically provided for in this Agreement.

(j) This Agreement may be executed in counterparts that together will be one agreement.

IN WITNESS WHEREOF, the CITY and APSD have executed this Agreement on the dates set forth below.

(signature pages follow)

BOARD OF EDUCATION OF ALAMOGORDO PUBLIC SCHOOLS

By: _____ Date: _____, 2020
Jerrett Perry, Superintendent

STATE OF NEW MEXICO

COUNTY OF OTERO

This instrument was acknowledged before me on _____ (date) by
Jerrett, Perry Superintendent of Alamogordo Public School District on behalf of
the Board of Education of Alamogordo Public Schools.

Notary Public

My commission expires:

Seal

Approved as to form and legal sufficiency:

By: _____

Attorney for the Board of Education of Alamogordo Public Schools

CITY OF ALAMOGORDO

By: _____ Date: _____ , 2020

Name: _____

Title: _____

This instrument was acknowledged before me on _____ (date) by _____, the _____ of the City of Alamogordo on its behalf.

Notary Public

My commission expires:

Seal

Approved as to form and legal sufficiency:

By: _____

Attorney for the City of Alamogordo

EXHIBIT A

Description of the APSD Site

EXHIBIT B

Description of the CITY Parcel