

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU"), dated as of July 27, 2018 is made between the **Brecksville-Broadview Heights City School District** (hereinafter collectively called "District"), and the **City of Brecksville** (hereinafter called "City" and together, with the District "the Parties").

Recitals:

A. City is the owner of property consisting of approximately 75 acres and commonly known as Parcel D of Blossom Hill Park (Permanent Parcel Number 603-10-004), in Brecksville, Ohio (as identified on the attached **Exhibit A**, and incorporated by this reference) and consisting of the land and all equipment, improvements, rights, privileges, and easements belonging to or in any way appertaining thereto ("Parcel D").

B. District is the owner of those properties consisting of the Central School ("Central" and known as Permanent Parcel Number 601-34-004 and approximately 3.622 acres) and the Stadium Drive ("Stadium Drive" and known as Permanent Parcel Number 301-29-003 and approximately 10.563 acres) as described on **Exhibits B** and **Exhibit C**, respectively, and incorporated by this reference) and consisting of the land and all improvements, rights, privileges and easements belonging to or in any way appertaining thereto (collectively "the District's Premises").

C. District is developing a project consisting of a new 160,000 square foot elementary on approximately 25 acres in Blossom Hill Park with playground facilities that will be open to the public and maintained by District (the "Project") and the City would be permitted to use portions of the School when not needed for the District's educational needs.

D. City is interested in developing a multi-structure Field House that will consist of four sport courts, indoor turf field and support facilities and to allow the District to use that facility during the School Day and at times when not needed for the City's recreational needs.

E. City and District have agreed to exchange approximately 25 acres of Parcel D for the District's Premises, pursuant to Ohio Revised Code § 3313.40, subject to the terms and conditions hereinafter set forth and to be developed in a subsequent real estate purchase agreement.

F. The City and District believe that there are substantial savings to be generated by simultaneously developing the Field House and new School at the same time.

NOW, THEREFORE, the City and District agree as follows:

1. Land Swap. The District and City agree to an exchange of Premises pursuant to Ohio Revised Code § 3313.40. It is the intention of City and District to exchange each of their respective properties without compensating the other beyond the exchanged property. Specifically, City and District agree and acknowledge that approximately 25 acres of Parcel D and the District's Premises to be exchanged for the Project are of comparable size and value.

There will be driveway easements from one party to the other depending on whose property the driveways and parking lots are on.

2. **Stadium Drive Shared Use Agreement.** The District and City will develop a Shared Use Agreement describing and providing for the continued use of Stadium Drive by the District in a manner and under such terms as are consistent with its current use of Stadium Drive, which has been for the District's athletic programs and teams to practice on School Days until dusk.

3. **Timing of Transfers.** The City will transfer the approximately 25-acre portion of Parcel D once the design of the Project is sufficiently completed such that the Parties understand where the school will be located and what land comprised of the approximately 25-acre portion of Parcel D is needed to support the school.

The District will transfer the Stadium Drive when the 25-acre portion of Parcel D is transferred.

The District will execute a Quit Claim Deed to transfer the Central Property when the 25-acre portion of Parcel D is transferred and will place it in Escrow with the City's Law Department, until such time as the new School is opened, whereupon the City shall record the Deed conveying the Central Property to the City.

4. **Conveyance.** All conveyances will be by quitclaim deed (the "Deed"), free and clear from all liens and encumbrances, except the following (collectively, the "Permitted Exceptions") (i) all real estate taxes and assessments, both general and special ("Taxes"), not yet due and payable; (ii) any title and survey exceptions which are not objected to by District or City, respectively, or which are objected to by District or City, respectively, but which City or District, respectively, does not agree to cure or is not required to cure pursuant to the purchase agreement; (iii) zoning and building ordinances; (iv) those matters mutually agreed upon by District and City as set forth in the purchase agreement; when and if closing occurs, good, marketable, indefeasible, fee simple title to the Premises.

5. **Condition of the Premises.** Portions of Parcel D have been delineated as wetlands. The City will be responsible for obtaining a jurisdictional determination and permits from the Army Corp of Engineers and if applicable the OEPA related to any impact on those wetlands. The District will provide information necessary for the City to obtain those permits.

The District Premises shall be delivered free of all trash, debris, and parties in possession to the City at Closing.

6. **Projects.** The City intends to develop on Parcel D a multi-structure Field House that will consist of four sport courts, indoor turf field and support facilities. The City shall have exclusive control over the budget and interior design of the Field House so long as it develops at least two gyms for school use.

The District intends to develop a new approximately 160,000 square foot elementary on approximately 25 acres in Blossom Hill Park with playground facilities. The District shall have exclusive control over the budget and interior design of the School so long as it develops the cafeteria space in close proximity to the Field House.

The Parties will work together on the exterior to create a unified design that complies with the requirements of the City's Zoning Code.

7. **Project Collaboration.** The City and District intend to reduce expenses by collaborating in the following manner:

A. Each Party has selected Then Design Architect, LLC (“TDA”) as its Architect. The District will hold the contract with TDA and the City will pay its pro rata share, however the City shall be listed as an intended beneficiary of the contract or otherwise be assured that the City has privity with TDA.

B. Costs of Boundary and Topographical Surveying, Geotechnical, Environmental Assessments and Utilities (Electric, Gas, Water, Sanitary, Storm, Telecom) Development and any other costs related to the overall site development (excepting the wetlands mitigation) will be equally shared.

C. Construction Testing shall be shared based on the Parties’ respective costs.

D. The Parties have agreed to use the Construction Manager at Risk (CMR) delivery model. The District will be responsible for issuing the RFQ and RFP. The District and City will have equal representation in the selection of the CMR. The Contract for the CMR will be held by the School District with the City having privity with the CMR, and the City will pay for costs associated with the Field House. The District shall pay all other costs not associated with the Field House. CMR general conditions, personnel expenses and fees will be shared based on the parties’ respective costs. CMR contingency will be prorated based on the respective costs of the School and Field House.

E. The costs of constructing the Parking lots and any additional outdoor ball fields, the use of which will be shared by the Parties, will be divided equally between the City and District.

F. Core Team Meetings and Executive Meetings will be scheduled so that the Architect, CMR, District and City can attend.

8. **Shared Facilities.** The City will own the Field House and the District will own the School.

The City will permit the District to have the exclusive use of the Field House during School Hours on School Days.

During District tournaments, The District will have the use of the Field House if needed.

After School Hours and on non School Days, the City may make use of the School's dining space. Use of the kitchen will require District personnel to operate the kitchen equipment.

Each Party will be responsible for cleaning, operating and maintaining their respective buildings. Any maintenance to common walls and roofs will be shared.

The City will plow the access drive. The District and City will contract with a third party for plowing of the parking lots. The District will be responsible for clearing snow from sidewalks used by students and guests to access the School. The City will be responsible for clearing snow from sidewalks used by its guests and licensees to access the Field House.

Each party will be responsible for utility costs associated with their facilities.

9. **Authority.** Day to Day decision making associated with the development of the Field House and School will reside with the Mayor and Superintendent of Schools.

The final Real Estate Swap and Driveway Easement Agreement will be presented to the respective legislative bodies.

Utility Easement Agreements will be presented to the entity that owns the property impacted.

A Shared Use and Construction Agency Agreement will be presented to the respective legislative bodies.

The Architect will present the Program of Requirements/Schematic Design, Design Development and Guaranteed Maximum Price/Construction Document phases of design to each legislative body for their respective approvals. The CMR will present the respective budgets for approval at the time the Architect presents the design.

The CMR Contract and Guaranteed Maximum Price Amendments will be shared with the City and the District will not contract for the construction of the Field House until it receives a certification of funds from the Director of Finance. The School District Board will approve the GMP amendments.

The District will have the responsibility to sign change orders. No change order for the Field House will be approved without the City's consent.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date above first written.

For Brecksville-Broadview Heights City School District ("District")

By: _____

Its: Superintendent of Schools

For City of Brecksville ("City")

By: _____

Its: Mayor