

LAND ACQUISITION AGREEMENT

This Land Acquisition Agreement (“Agreement”), made this _____ date of _____, 2020 (the “Effective Date”) by and between THE BOARD OF EDUCATION OF MONTGOMERY COUNTY, a body corporate and politic of the State of Maryland, (hereinafter the “Board”) at 850 Hungerford Drive, Rockville, Maryland 20850, and the CITY OF GAITHERSBURG, a municipal corporation (hereinafter referred to as “City”), at 31 South Summit Avenue, Gaithersburg, Maryland 20877.

WITNESSETH

WHEREAS, the Board has determined that a new elementary school is needed in the Gaithersburg Cluster;

WHEREAS, approved Montgomery County FY 2020 Capital Improvements Program includes planning for a new elementary school to open in the Gaithersburg Cluster by August, 2022;

WHEREAS, the Board has requested that the City provide the elementary school site on a portion of the Kelley Park property, which is owned by the City;

WHEREAS, the Mayor and City Council of Gaithersburg adopted Resolution No. R-_____ authorizing the City Manager to execute an agreement for the conveyance of property in Kelley Park to the Board as the site for the new elementary school;

WHEREAS, the City has agreed to convey to the Board that portion of Kelley Park shown or described on Exhibit A attached hereto and incorporated herein (the “Property”) subject to the terms and conditions of this Agreement;

WHEREAS, the City intends for the remainder of the Kelley Park site to continue to be used for passive and active park use, including, without limitation, for athletic fields;

WHEREAS, the City and the Board believe that the school operation and park site athletic fields must be maintained and operated separately in a cooperative manner for maximum efficiency and benefit to the citizens of Gaithersburg;

WHEREAS, the development and construction of the school and related site improvements on the Property are referred to herein as the “Project”; and

WHEREAS, the Board and the City intend for the Project to be completed and open for school operations by August 2022.

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and undertakings provided for in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree to the following:

1. Closing on the transfer of the Property (“Closing”) shall take place within 30 days after the Closing Conditions (defined below) have been satisfied, at a time and

location designated by written notice from the Board to the City. At Closing, the City shall convey to the Board, at no charge, good and marketable fee simple title to the Property by customary special warranty deed, free of all liens and encumbrances except for those encumbrances accepted by the Board under Paragraph 2 below. The deed shall also reference the provision in that certain Annexation Agreement dated March 3, 1969 between the Mayor and Council of Gaithersburg and Noswal Investment Company, Inc. (“Annexation Agreement”) requiring that the Property be reserved for dedication to the City for public use. The City shall execute such additional reasonable documents as may be necessary in connection with such conveyance. All taxes, charges, fees, and other reasonable third-party costs associated with the transfer, not including legal expenses, shall be borne by the Board. The entire remaining portion of the Kelley Park site (the “Remainder Property”) will remain in City ownership to manage and retain in its discretion. The City shall provide a staging area construction and access easement over an adjacent area of approximately 1.5 acres for the purpose of facilitating development of the school. The description, terms and conditions of such easement are described in Exhibits B-1 and B-2 attached hereto and incorporated herein.

2. During the time this Agreement remains in effect, the Board shall have the right, at its own expense, to cause such architectural, engineering, environmental, soils, and other tests, studies, and investigations to be made with respect to the Property (collectively, “Studies”) as the Board may deem appropriate. In connection with the Studies, the Board, and its consultants and other designees, shall have a right of entry upon the Property in accordance with terms and conditions of a Right of Entry Agreement to be executed simultaneously with this Agreement. During any such entry upon the Property, the Board, its employees and agents shall conduct their Studies in accordance with industry standards and in a manner to ensure that their activities do not interfere with or harm public use of the Property. If this Agreement terminates, the Board, at its own expense, shall restore any damage to the Property caused by the Board’s tests and studies and immediately thereafter vacate the Property. The Board shall also have the right to examine the state of title to the Property. If the Board notifies the City that any title matter would interfere with its proposed construction or use of the Property, the City shall use commercially reasonable efforts to resolve the title objection to the Board’s reasonable satisfaction. If the City is unable to resolve any title objection to the Board’s satisfaction within thirty (30) days after the date of the objection (or such longer period as the parties may agree) or if the City will incur costs in order to resolve the title objection, then the Board shall have the right to terminate this Agreement, waive the title objection or pay the costs to resolve the title objection and proceed to Closing in accordance with the remaining terms of this Agreement. Any title matter of record existing on the Effective Date and not objected to by the Board shall be deemed accepted by the Board.
3. The obligation of the Board to acquire the Property shall be contingent upon satisfaction of the following conditions precedent (“Closing Conditions”) at the time of Closing:

- a. The representations and warranties made by either Party in this Agreement shall continue to be true and accurate and each Party shall have performed all covenants and obligations and complied with all conditions required of it by this Agreement.
 - b. Title shall be in the condition contemplated in Paragraph 2 of this Agreement.
 - c. All off-site easements, if any, necessary for Board's contemplated development and use of the Property shall have been obtained by the Board at the Board's sole cost and expense. The City shall have the right to review and approve all necessary off-site easements over City-owned property.
 - d. As a condition to Closing, all necessary utility lines and facilities shall be immediately available for use and connection in size and capacity adequate to serve Board's planned use.
 - e. As a condition to Closing, the Board shall have obtained final issuance by the applicable governmental authorities of all permits, approvals and licenses necessary for the development and construction of the Project (excluding building permit) (the "Approvals"). The Approvals shall be deemed "finally issued" at such time as the Approvals have been issued by the applicable governmental authorities, without conditions unacceptable to the Board, and all appeal periods shall have expired without appeal having been taken, or if taken, all appeals having been resolved in favor of the Approvals.
 - f. The Board shall have obtained approval at the State level for the acquisition of the Property.
 - g. In the event any of the conditions set forth in this Paragraph 3 are not satisfied as of the date of Closing, either Party shall have the right to terminate this Agreement by giving written notice to the other. In that event, the parties shall be relieved of all liability under this Agreement, at law or in equity; provided, however, that if any condition is not satisfied as the result of a breach or default by the other Party, that Party shall not be relieved of liability and each Party shall have all rights and remedies which they may have under applicable law.
4. The Board shall submit the site plan for the Project to the City Planning Commission for courtesy site plan review, and the City Planning Commission shall not unreasonably withhold, condition or delay approval thereof. The Board's site plan submittal shall include, but not be limited to, natural resource inventory and forest stand delineation plans (NFI/FSD) and reforestation in accordance with state and City law requirements, a traffic impact study in conformance with the City's Traffic Impact Study Standards and Regulations, and stormwater concept and final stormwater/sediment control concept plans in conformance with state and City law

requirements. All City Planning Commission comments and concerns, if any, on the site plan shall be carefully reviewed and considered by the Board, using its reasonable business judgment, before final approval. In order to streamline this courtesy review, the Board shall have the right to combine into a single process the review and approval of the preliminary plan of subdivision and the final site plan (as opposed to 2 separate review/approval processes – one for the preliminary plan of subdivision and one for the final site plan). The City shall use best efforts to complete its courtesy site plan review within 90 days after the Board submits the site plan to the City Planning Commission.

5. The Board shall submit for approval a final record plat in accordance with the City's standard procedures. The City shall (a) use best efforts to review and provide any comments on the initial record plat submittal within ninety (90) days after the Board submits the plat to the City; and (b) shall use best efforts to grant final approval to the record plat within fifteen (15) days after the Board submits to the City the revised record plat addressing the City's comments.
6. Montgomery County Department of Permitting Services ("DPS") shall have sole authority to review and approve all building and life safety related design and construction permits.
7. The City shall have sole authority to review and approve the Natural Resources Inventory and Forest Stand Delineation (forest conservation plan) for the Project and any documents required by the mandatory referral submission.
8. The parties acknowledge that, pursuant to that certain Memorandum of Understanding dated March 17, 2011 by and among the Board, the City and the County, all authority to accept permit applications, review submitted permit documents, conduct necessary inspections during and upon completion of the construction phase, and issue necessary permits and certificates for the Project shall lie exclusively with Montgomery County (the "County").
9. The Board shall pay all water and sewer permit fees and water and sewer service charges as are customarily charged by the Washington Suburban Sanitary Commission. As provided by State law, the City hereby waives all other application fees, plan review fees, inspection fees, permit fees and any other fees or charges in connection with the development or construction of the Project.
10. After the date of this Agreement, the City shall not alter the physical condition of the Property, nor change the state of title to the Property. City shall deliver the Property vacant and free of any tenancies or occupants.
11. In connection with the construction of the Project, the City shall design and construct one (1) rectangular athletic field on the Remainder Property in the location adjacent to the Property and shown on Exhibit C attached hereto (the "Field"). The Field may be grass or artificial turf, at the City's sole discretion. The Field shall be completed and open for use by the first day of class for the new

school, unless the Board's construction of Project interferes with the City's installation of the Field, in which event the City shall have a day-for-day extension of this deadline for each day that the City is delayed by the Board's interference. Construction scheduling between the City and the Board's Construction Manager shall be coordinated such that ample construction time for the completion of the Field is provided. The Board shall reimburse the City for the reasonable design and construction costs for the Field within thirty (30) days after the Field is completed and open for use, subject to the Board's approval of such costs, which shall in no event exceed Eight Hundred Thousand Dollars (\$800,000). The Board shall have the right to review and approve the plans and specifications, the budget and the construction contract(s) for the Field prior to construction, but shall not unreasonably withhold, condition or delay approval thereof, and to inspect the Field upon completion. In the event the MCPS staff determines that the Field is not constructed in accordance with the approved plans and specifications, the City using its reasonable business judgment will endeavor to correct all defects prior to the date the new school opens for classes. The manufacturer or contractor installing the Field shall provide a minimum of a one-year warranty on the Field.

In preparation for the City's construction of the Field, the Board shall do the following: (a) rough grade the Field in accordance with the grading plan approved by the parties; (b) install storm drainage facilities agreed upon by the parties; (c) install the "sub-base" for the Field as agreed by the parties. The City shall construct the Field from the sub-base upward to completion.

12. Prior to Closing, the City and the Board will negotiate a separate joint use agreement ("Joint Use Agreement") governing the parties' use and maintenance of the Field. The Joint Use Agreement shall include, but not be limited to, the following general criteria:
 - a. Specify time of usage for Montgomery County Public Schools ("MCPS") programs and activities during the Board's school year and provide that if the need arises, the Board and the City will work together to make changes during the school year for MCPS's potential additional use of the Field;
 - b. City sponsored programs during the academic year (5:00 p.m. to 9:45 p.m. on weekdays);
 - c. City sponsored programs during the academic year when the school is not in session from 8:00 a.m. to 9:45 p.m., at the Board's sole and absolute discretion;
 - d. City sponsored program use (8:00 a.m. to 9:45 p.m. on weekends);
 - e. The City will be responsible for the scheduling of the Field as the centralized scheduler;
 - f. The Board shall ensure that all usage of the Field during its programming periods shall comply with installation warranty requirements;

- g. The Board will designate one (1) staff member who will work with the City regarding Field scheduling;
 - h. The Board will be responsible for all litter and general cleanup associated with the use of the Field during the academic year during the school day. The City shall be provide the maintenance, repair and upkeep of the Field;
 - i. In the case of inclement weather, the City and the Board will refrain from using the Field so as to minimize the damage;
 - j. The City will establish and coordinate the standards for Field maintenance and shall have the sole authority to close the Field for maintenance;
 - k. The City will dictate a refurbishment schedule to remove the Field from service for reconditioning;
 - l. To the extent permitted by law and subject to appropriations from the Board's funding authorities, the Board assumes all liability associated with use of the Field by the school. With respect to any other non-City group that is given access to the Field by the Board during academic and after school periods of usage (an "Other Group"), the Board shall require, as a condition of the Other Group's access to the Field, that the other Group execute a written indemnification agreement in favor of the City for loss or damage arising out of such access. If such an indemnification agreement is not provided by the Other Group, then the Board shall assume all liability associated with use of the Field by the Other Group;
 - m. The Field will be excluded from the MCPS/ICB field inventory list;
 - n. Guidelines for shared use may be reviewed regularly, but can only be amended if agreed upon in writing by both the City and MCPS. In no instances may the guidelines initiate any change in the City's leadership of scheduling responsibilities or ownership of the Field; and
 - o. A cost sharing agreement stating that, at the end of the useful life of the Field, the Board shall share the cost of one (1) replacement field, with the Board's share not to exceed 25% of the total replacement cost. . All additional costs associated with this first field replacement, and all costs of any future field replacement after this first field replacement, shall be at the City's sole expense.
13. The Board, in cooperation with the City, will work with the Interagency Coordinating Board for Community Use of Public Facilities (CUPF), pursuant to MCPS Regulation KGA-RA (adopted October 1982, as amended) and related policies and regulations, to establish preferred times for the City's use of the gym after school hours on Monday through Friday and weekends. The City will have access to the school gymnasium via a separate outside entrance as warranted. The City shall be provided preferential consideration for use of the school building as a

City summer camp location, subject to standard MCPS regulations, policies and programmatic use. The City shall not be charged any facilities payment (except for staff salaries) for the use of school facilities under this provision.

14. In the event that the Board ceases to operate the elementary school and determines that the Property is no longer needed for school purposes, then the Board shall support the City in the County's process for disposition of the Property consistent with applicable laws, including but not limited to Maryland Code, Education, Section 4-115, the provisions in the deed of dedication, and the Annexation Agreement.
15. The Board shall provide the City with monthly Project updates appropriate for distribution to the community.
16. The Project shall include the following features:
 - a. The City will have the right to install and maintain on the Property exterior security cameras (including infrastructure needed for connectivity) capable of monitoring (i) the Kelley Park grounds in the immediate vicinity of the school, and (ii) the Victory Farm Drive street frontage, provided, however, the cameras shall be positioned in a manner that is intended not to conflict with the Board's privacy policies, regulations and applicable law.
 - b. The plans shall integrate the pathways on the Property into the overall Kelley Park pathway system, subject to Project design constraints.
 - c. The Board shall furnish new additional bleachers at an agreed upon size at the Kelley Park Field #1 pursuant to a separate agreement to be negotiated between the parties prior to Closing.
 - d. The site plan shall include 5 dedicated parking spaces for park visitors.
 - e. The Board shall construct a community tot lot in the area adjacent to the Property, to be shown on the site plan.
17. Nothing herein or any other provision of this Agreement shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of the Board pursuant to Maryland law, or otherwise. For the purposes of this provision, the Board includes the Board's officers, officials, agents, and employees.
18. For all construction on the Property the parties shall comply with all applicable federal, state, and local laws and regulations, as well as all applicable safety requirements, Board of Education policies, and MCPS regulations issued by the Superintendent of Schools ("Laws"). Board of Education policies and MCPS regulations are available at this link: www.montgomeryschoolsmd.org/departments/policy/. This obligation includes but is not limited to: (i) all applicable Laws regarding non-discrimination, as well

as Board Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency* (“Board Policy ACA”), which prohibits discrimination based on actual or perceived personal characteristics, including race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations; (ii) all applicable Laws regarding ethics and conflict of interest, including Board of Education Policy BBB, *Ethics*; and (iii) all applicable Laws regarding the safety and security of students, including the following Maryland statutes: (a) Section 11-722 of the Criminal Procedures Article, Annotated Code of Maryland, which prohibits an entity that enters into a contract with a county board of education from knowingly employing a registered sex offender to work on school property; (b) Section 6-113 of the Education Article, Annotated Code of Maryland, which prohibits any entity that is a contractor or subcontractor for a local school system to knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving specific sexual offenses, child sexual abuse, and crimes of violence; and (c) Section 5-551 of the Family Law Article, Annotated Code of Maryland which requires any entity that is a contractor or subcontractor for a local school system to ensure that any individuals in its work-force undergo a criminal background check, including fingerprinting, if the individuals will work in a school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children

19. All recitals listed above shall be incorporated into and become part of this Agreement.
20. This Agreement may only be amended in writing by the parties, shall be constructed under the laws of the State of Maryland, and shall bind the parties, their successors and assigns. Neither party may subcontract, assign, or transfer responsibilities undertaken in this Agreement to another person or entity, without the express, written consent of the other party.
21. The parties agree that this Agreement will be recorded among the Land Records of Montgomery County, Maryland.
22. The provisions of this Agreement are for the sole purpose of setting forth the respective rights and obligations of the parties hereto. None of the provisions of this Agreement are intended for the benefit of any third party, and no such third party shall have the right to enforce the provisions of this Agreement. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or principal-agent relationship between the parties, and no party shall, by virtue of this Agreement, have any right, power, or authority to act or create any obligation, expressed or implied, on behalf of the other party.

23. If any provision of this Agreement is held by a court of law, or other authority having jurisdiction, to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect to the extent allowed by law and the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired so long as the intent of the Agreement can still be carried out.
24. The representations, warranties and indemnities contained herein shall survive Closing or the termination of this Agreement.
25. This Agreement, and any amendments hereto, may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement by causing the same to be signed as of the day and year first above written.

ATTEST:

CITY OF GAITHERSBURG

WITNESS

By: _____
Tony Tomasello, City Manager

ATTEST:

THE BOARD OF EDUCATION OF
MONTGOMERY COUNTY, MARYLAND

Secretary

By: _____

President

APPROVED for the Board of Education of Montgomery County

_____, Superintendent of Schools

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I hereby certify that, before me, the subscriber, a NOTARY PUBLIC of the STATE OF MARYLAND, in and for Montgomery County, personally appeared Tony Tomasello, City Manager for the City of Gaithersburg, known to me (or satisfactorily proven) to be the person whose name appears herein and acknowledged the foregoing Agreement to be his act.

WITNESS MY HAND AND NOTARIAL SEAL this _____ day of _____, 2020.

Notary Public (Seal)

My Commission Expires:

* * *

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I hereby certify that, before me, the subscriber, a NOTARY PUBLIC of the STATE OF MARYLAND, in and for Montgomery County, personally appeared _____, President of The Board of Education of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name appears herein and acknowledged the foregoing Agreement to be his/her act.

WITNESS MY HAND AND NOTARIAL SEAL this _____ day of _____, 2020.

Notary Public (Seal)

My Commission Expires:

EXHIBIT A

Legal Description of Property



MD | OH | PA | VA | WV

TRIAD Listens, Designs & Delivers

Exhibit A

Legal description of part of the lands of the City of Gaithersburg situated along the south side of Victory Farm Drive, approximately 1,100 feet East of its intersection with Girard Street in the City of Gaithersburg, Election District #9, Montgomery County, Maryland.

Beginning at a point located N 67° 09' 17" E 303.82 feet from a concrete monument found along the South side of Victory Farm Drive and at the Northwesterly corner of Parcel 12 as shown on a plat entitled, "Brookes Avenue Street Dedication and City Park – Parcel 12, Victory Farm", dated October, 1979 and recorded among the land records of Montgomery County, Maryland in Plat Book 109, as Plat Number 12762. Thence running along the South side of Victory Farm Drive the following two (2) courses and distances, first by a curve to the left having a radius of 2,030.00 feet, an arc length of 423.80 feet and subtended by a chord bearing and distance of

- 1) N 60° 12' 56" E 423.03 feet to a rebar and surveyor's cap found. Thence
- 2) N 54° 14' 05" E 200.62 feet to a point at the Northerly most corner of the land described in a conveyance from Gaithersburg-King Property Partnership unto the City of Gaithersburg by deed dated June 17, 1983 and recorded among the aforesaid land records in Liber 6105, at Folio 849. Said point also being at the Westerly most corner of Lot 68, Block A as shown on a plat entitled, "Plat 13, Lots 62 – 71, Block A, Lots 16 – 19 & Parcel A, Block D, Saybrooke" and recorded among the aforesaid land records in Plat Book 142, as Plat Number 16343. Thence running with the outlines of said conveyance and plat
- 3) S 56° 28' 52" E 158.79 feet to a point. Thence leaving said outlines and running across the lands described in Liber 6105, at Folio 849 the following five (5) courses and distances
- 4) S 39° 12' 55" W 184.54 feet to a point. Thence
- 5) S 50° 47' 05" E 48.42 feet to a point. Thence
- 6) S 39° 12' 55" W 47.41 feet to a point. Thence
- 7) S 50° 47' 05" E 249.23 feet to a point. Thence
- 8) S 40° 05' 09" W 273.77 feet to a point located on aforesaid Parcel 12 and also on the land described in a conveyance from Gaithersburg-King Property Partnership unto the City of Gaithersburg by deed dated January 9, 1980 and recorded among the aforesaid land records Liber 5496, at Folio 202. Thence running across said lands the following six (6) courses and distances

1075-D Sherman Avenue | Hagerstown, MD 21740

301.797.6400 301.797.2424 www.triadeng.com

- 9) N 51° 12' 23" W 37.32 feet to a point. Thence
- 10) N 82° 52' 35" W 113.12 feet to a point. Thence
- 11) N 18° 15' 51" W 90.45 feet to a point. Thence
- 12) N 58° 18' 31" W 34.57 feet to a point. Thence
- 13) S 83° 26' 01" W 209.63 feet to a point. Thence
- 14) N 36° 27' 19" W 273.72 feet the point of beginning.

Containing 5.7122 acres of land, more or less.

Being part of two (2) separate tracts or parcels of land described as follows;

- 1) ...in a conveyance from Gaithersburg-King Property Partnership unto the City of Gaithersburg by deed dated January 9, 1980 and recorded in Liber 5496, at Folio 202.
 - 2) ... in a conveyance from Gaithersburg-King Property Partnership unto the City of Gaithersburg by deed dated June 17, 1983 and recorded in Liber 6105, at Folio 849;
- Both being recorded among the land records of Montgomery County, Maryland.

The tract or parcel of land described herein being shown on Exhibit B entitled, "Property to be Conveyed to Montgomery County Public Schools", dated 02/20/2020, prepared by Triad Engineering, Inc. of Hagerstown, Maryland and recorded among Triad's files as Job Number 03-19-0195. This Exhibit B is intended to be attached hereto and made a part of this legal description.

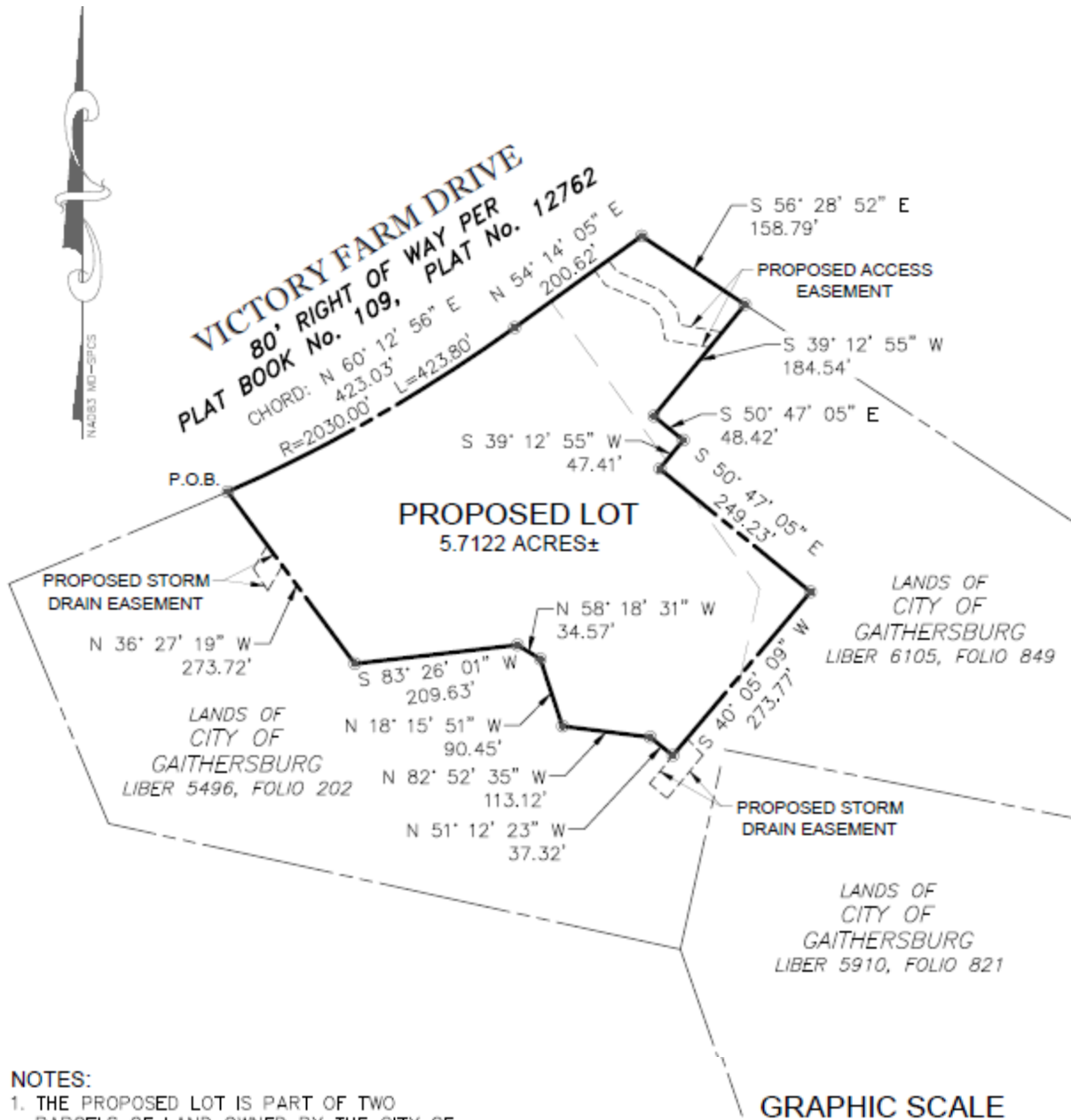
This description was prepared by Triad Engineering, Inc. and the bearing system is based on NAD83 Maryland State Plane Coordinate System.

The undersigned being a licensed surveyor, personally prepared or was in responsible charge of the preparation and the survey work reflected in this metes and bounds description, in compliance with the requirements set forth in "COMAR" Title 09, Subtitle 13, Chapter 06, Regulation .12.

Prepared by: Ronald D. Bidle, Jr., PLS
Maryland Registration Number 21517
Expires: 07/13/2021



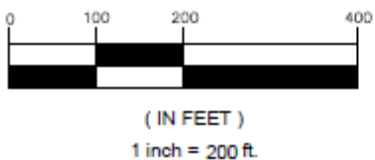
Ronald D. Bidle, Jr.



NOTES:

1. THE PROPOSED LOT IS PART OF TWO PARCELS OF LAND OWNED BY THE CITY OF GAITHERSBURG AS SHOWN HEREON AND IS SUBJECT TO REVIEW AND APPROVAL OF THE SUBDIVISION PROCESS IN THE CITY OF GAITHERSBURG, MARYLAND.
2. THIS EXHIBIT WAS PREPARED IN CONJUNCTION WITH EXHIBIT A, A LEGAL DESCRIPTION OF THE PROPOSED LOT SHOWN HEREON.

GRAPHIC SCALE



CADD FILE: 03190195 Exhibit B		PROPERTY TO BE CONVEYED TO MONTGOMERY COUNTY PUBLIC SCHOOLS SITUATED IN THE CITY OF GAITHERSBURG, MONTGOMERY COUNTY, MARYLAND ELECTION DISTRICT: #09 TAX MAP: FT62 P/O PARCELS: N612 & P619		TRIAD TRIAD ENGINEERING, INC. www.triadeng.com 1075-D SHERMAN AVENUE HAGERSTOWN, MD 21740
DRAWN BY: R.D.B.	CHECKED BY: R.D.B.			
DATE: 02/20/2020	SCALE: 1"=200'	FILE NO: N/A JOB NO: 03-19-0195	SHEET 1 of 1	

EXHIBIT B-1

**Legal Description of Staging Area Construction and
Access Easement Area**

EXHIBIT B-2

Terms & Conditions

“Staging Area Construction and Access Easement”

1. The use of the easement area will be limited to the storage of materials, equipment and supplies, construction trailers, and parking.
2. The easement area is to be fenced off and secured, and will be maintained in a neat and orderly manner by MCPS.
3. The period of use of the easement area will be limited to the construction of the elementary school and related improvements. An estimated date of completion for the school will be provided by MCPS at the onset of any construction at the site.
4. To the extent permitted by law and subject to appropriations from the Board’s funding authorities, MCPS will indemnify the City against any and all claims, losses, damages and/or injuries to persons and property, including legal expenses, arising out of MCPS’s use of the easement area, except to the extent arising out of the negligence or willful misconduct of the City, its agents, employees and contractors. Nothing in this paragraph 4 or any other provision of this Agreement shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of MCPS or the Board pursuant to Maryland law, or otherwise. For the purposes of this provision, the Board includes the Board’s officers, officials, agents, and employees.
5. The easement is provided by the City exclusively to MCPS. Other than to cure a default of these terms and conditions, or for inspection or enforcement purposes, the City does not intend to enter the easement area.
6. The City shall have the right to approve the layout of the staging area to ensure the impacts on adjacent parkland and neighborhood are minimized, such approval not to be unreasonably withheld, conditioned or delayed.
7. Upon completion of the Project, the easement area shall be returned to its original condition or to the conditions as shown on the approved site plan.
8. All of the above terms and conditions are rights and obligations of MCPS. The City reserves the right to cure violations at the expense of MCPS.

EXHIBIT C

[Artificial] Turf Field