

STATE OF NEW MEXICO §
 §
COUNTY OF OTERO §
 §
ALAMOGORDO MUNICIPAL §
SCHOOL DISTRICT NO. 1 §

The Board of Education of the Alamogordo Municipal School District No. 1 ("Board") County of Otero, State of New Mexico, met in regular session, in full conformity with law and the rules and regulations of the Board at the Administrative Complex, 1211 Hawaii Avenue, Alamogordo, New Mexico, on August 16, 2023, at the hour of 6:00 p.m. The duly elected officers and members of the Board were as follows:

President:	Judy Rabon
Vice President	Amber Ross
Secretary:	Carol Teweleit
Members:	Angela Cadwallader Amanda Jewell

Upon roll call, the following members of the Board were found to be present:

The following members of the Board were found to be absent:

The Acting Superintendent of Schools, Pamela Renteria, was also present.

Acting Superintendent Renteria thereupon introduced and recommended adoption by the Board of a resolution entitled:

RESOLUTION AUTHORIZING LAND EXCHANGE, ESTABLISHING PROCEDURES FOR THE EXCHANGE AND DELIVERY OF THE QUITCLAIM DEED, AND AUTHORIZING OTHER MATTERS RELATED TO THE LAND EXCHANGE

Member _____ then moved the adoption of the foregoing entitled resolution. Member _____ seconded such motion. The motion to adopt said resolution was thereupon put to a vote and was passed and adopted on the following recorded vote:

Those Voting Aye:

Those Voting Nay:

Those Abstaining:

After consideration of other business not related hereto, on motion duly made, seconded, and carried, the meeting was adjourned.

Dated at Alamogordo, New Mexico, this 16th day of August 2023.

President, Board of Education
Alamogordo Municipal School District No. 1

[SEAL]

Attest:

Secretary, Board of Education
Alamogordo Municipal School District No. 1

Alamogordo Public School District Board of Education

Resolution No. 2023-2024-04

RESOLUTION AUTHORIZING LAND EXCHANGE, ESTABLISHING PROCEDURES FOR THE EXCHANGE AND DELIVERY OF THE QUITCLAIM DEED, AND AUTHORIZING OTHER MATTERS RELATED TO THE LAND EXCHANGE

This Resolution is adopted this 16th day of August, 2023 by the Board of Education of the Alamogordo Municipal School District No.1 (“Board” and “District”) at a duly called Board meeting, in accordance with the Open Meetings Act.

WHEREAS, the Board owns approximately 24.959 acres +/- of vacant land located at Fairgrounds Rd., Alamogordo, New Mexico (“Fairgrounds Parcel”), acquired from the City of Alamogordo, a municipality within the District and Otero County, New Mexico (the “City”) pursuant to a Land Exchange Agreement dated February 25, 2021 recorded on April 29, 2021 in the records of the Otero County Clerk as Document No. 202104431 (the “2021 Land Exchange Agreement”); and

WHEREAS, the District intended to construct a new educational facility on the Fairgrounds Parcel, however, the design and engineering studies conducted uncovered site conditions resulting in the determination of the Board that this property does not meet its needs as it is not economically feasible to address the flood zone construction and mitigation required to build on the site; and

WHEREAS, the Fairgrounds Parcel is vacant and therefore cannot be used for charter school purposes; and

WHEREAS, the Board of Education has a need for a buildable site to support the current and future development of the educational program delivered to the students enrolled in the Chaparral Middle School; and

WHEREAS, the District agreed under the terms of the 2021 Land Exchange Agreement to transfer to the City approximately 19.622 acres +/- of improved land located at 1401 College Ave. in Alamogordo, New Mexico (“Chaparral Parcel”), which is currently used for the Chaparral Middle School, and delivered to the City a Quitclaim Deed; and

WHEREAS, due to the site conditions on the Fairgrounds Parcel, the District has determined it in its best interest to exchange the Fairgrounds Parcel for the Chaparral Parcel under a new exchange agreement appended to this Resolution as Exhibit “A” (“2023 Exchange Agreement”); and

WHEREAS, the City has agreed to the terms of the exchange and will release all requirements that the District improve the Fairgrounds Parcel, nor will the District be

obligated to conduct demolition or make any improvements for the benefit of the City to the Chaparral Parcel required under the 2021 Exchange Agreement (the “Parcel Exchange”); and

WHEREAS, upon closing of the Parcel Exchange, the City and APSD agree to terminate any lease to the District relating to the Chaparral Parcel without cost to either party; and

WHEREAS, pursuant to NMSA 1978, § 13-6-2.1, the District administration must obtain the approval of the State Board of Finance (“SBOF”) prior to the Board’s consummation of the exchange and the City must obtain the prior approval of the Department of Finance Administration prior to the City’s consummation of the exchange; and

WHEREAS, approval of the Parcel Exchange by the SBOF may be conditioned upon the modification of the 2023 Exchange Agreement to incorporate revisions requested by staff of the SBOF or the Assistant Attorney General assigned to the SBOF or at the direction of the SBOF (collectively, “SBOF Revisions”); and

WHEREAS, it is in the best interest of the Board and District to approve the Parcel Exchange and the 2023 Exchange Agreement, subject to approval by the SBOF, and to authorize the Superintendent, whether an Acting Superintendent or a duly appointed Superintendent, (the “Superintendent”) and Board President to execute the 2023 Exchange Agreement in the form approved by the SBOF:

NOW THEREFORE BE IT RESOLVED by the Board of Education of the Alamogordo Municipal School District No. 1:

1. The Board determines that the Parcel Exchange (the conveyance of the Fairgrounds Parcel, in exchange for conveyance of the Chaparral Parcel and extinguishing all obligations of the District to make improvements to the Fairgrounds Parcel or any demolition or improvements for the benefit of the City to the Chaparral Parcel, is appropriate and in the best interest of the District and hereby approves the Parcel Exchange and the 2023 Exchange Agreement, subject to approval by the SBOF.
2. The Superintendent and District administration are directed to submit the 2023 Exchange Agreement to the SBOF for approval.
3. Following receipt of approval from the SBOF:
 - a. the Superintendent and Board President are hereby authorized, and the Board expressly delegates to the Superintendent and Board President the authority to, execute and deliver on behalf of the Board the 2023 Exchange Agreement in substantially the form appended hereto with SBOF Revisions as the Superintendent and Board President may determine are necessary or appropriate, which determination shall be

conclusively evidenced by his or her execution thereof, so long as the final form of the 2023 Exchange Agreement is approved by the District's attorneys and the terms of the 2023 Exchange Sale are not modified; and

- b. the Superintendent is hereby authorized, and the Board expressly delegates to the Superintendent the authority to execute and deliver on behalf of the Board such other documents and instruments as are necessary to complete and close the transactions authorized by this Resolution, including without limitation the Quitclaim Deed conveying the Fairgrounds Parcel to the City and other closing documents.
 - c. The Superintendent and Board President are further authorized to terminate any lease with the City for the Chaparral Parcel at no cost to either party.
4. This Resolution shall be effective as of the date of its adoption.

PASSED AND ADOPTED this 16th day of August 2023.

President, Board of Education
Alamogordo Municipal School District No. 1

ATTEST:

Secretary, Board of Education
Alamogordo Municipal School District No. 1

[SEAL]

STATE OF NEW MEXICO

§
§
§
§
§

COUNTY OF OTERO

SECRETARY'S CERTIFICATE

ALAMOGORDO MUNICIPAL
SCHOOL DISTRICT NO. 1

It is hereby certified that the foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of Education of the Alamogordo Municipal School District No. 1, constituting the governing body of said District, had and taken at a regular meeting of said Board held at the Administrative Complex, 1211 Hawaii Avenue, Alamogordo, New Mexico, on August 16, 2023, convening at the hour of 6:00 p.m., insofar as they concern the adoption of a resolution authorizing the exchange of real property, and certifications related thereto, copies of which being therein set forth, as recorded in the book of official records of the proceedings of said District kept in the office of the Superintendent of said District, and that said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein named were present at said meeting as therein shown.

WITNESS my hand and the seal of said District affixed this 16th day of August 2023.

Secretary, Board of Education
Alamogordo Municipal School District No. 1

[SEAL]

EXHIBIT A

2023 Land Exchange Agreement

(See Attached)

LAND EXCHANGE AGREEMENT

This Land Exchange Agreement (“Agreement”) is made by and between the Board of Education of the 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 and the CITY previously entered into that certain Land Exchange Agreement dated February 25, 2021 recorded on April 29, 2021 in the records of the Otero County Clerk as Document No. 202104431 (the “2021 Land Exchange Agreement”), to exchange real property in order to construct a new middle school on vacant land owned by the CITY.

B. Pursuant to the 2021 Land Exchange Agreement, APSD delivered to the CITY a Quitclaim Deed for the real property known as the Chaparral Middle School site located at 1401 College Ave., Alamogordo, New Mexico, consisting of approximately 19.622 ac. +/- with improvements, (the “Chaparral Parcel”).

C. Pursuant to the 2021 Land Exchange Agreement, the CITY transferred to APSD real property consisting of approximately 24.959 acres +/- of unimproved land located at Fairgrounds Road, Alamogordo, New Mexico (the “Fairgrounds Parcel”) through Quitclaim Deed recorded on April 29, 2021 in the records of the Otero County Clerk as Document No. 202104431.

D. In addition, APSD and the CITY agreed to the lease of the real property and improvements located on the Chaparral Parcel by APSD.

E. APSD, after completing design and engineering studies for the construction of an educational facility on the Fairgrounds Parcel determined it not to be economically feasible to build on the site due to the flood zone construction and mitigation requirements. APSD has not constructed any improvements on the Fairgrounds Parcel; therefore, there are no facilities available for lease to a District Charter School within the contemplation of the Charter Schools Act. A survey of the Fairground Parcel is attached hereto as Exhibit “A” and incorporated by reference.

F. Therefore, APSD has determined that the Chaparral Parcel is more suitably located, of suitable size, and it is more cost effective to renovate the existing educational facility or construct a new facility on the Chapparral Parcel. The CITY has determined that the Fairgrounds Parcel is suitable for CITY purposes. The CITY has agreed to convey the Chaparral Parcel to APSD and accept the Fairgrounds Parcel as consideration in full for the conveyance. APSD has agreed to convey the Fairgrounds Parcel to the CITY in exchange for the Chaparral Parcel, subject to approval by the State Board of Finance, and accept the conveyance of the Chaparral Parcel as consideration in full for the Fairgrounds

Parcel. Upon transfer, APSD and the CITY agree to terminate any Lease relating to the Chapparal Parcel.

G. Subject to the State Board of Finance's approval of the conveyance of the Fairgrounds Parcel to the CITY, the parties have agreed to an exchange of the Fairgrounds Parcel and the Chaparral. 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 Chaparral Parcel. APSD originally acquired in the Chaparral Parcel in 1966 and 1977 in two separate transactions. APSD has remained in control, possession and occupation thereof since delivering the Quitclaim Deed to the CITY in 2021. The Chaparral Parcel has not been used for manufacturing or commercial purposes but has been used as a District school. The District has concluded that there are no environmental indicators requiring a more extensive environmental analysis or that would require remediation for continued use as a public school. APSD has reviewed title to the Chaparral Parcel and determined that it is acceptable.

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

2. State Board of Finance. The conveyance of the Fairgrounds Parcel to the CITY in exchange for the Chaparral Parcel, is subject to approval by the State Board of Finance pursuant to § Section 13-6-2.1, NMSA 1978. Therefore, exchange of the Fairgrounds Parcel and the Chaparral Parcel 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 her 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 Chaparral Parcel and more specifically described on Exhibit B. The conveyance of the Chaparral Parcel to APSD does not include any well or ground water rights. However, the Chaparral Parcel is within the CITY's municipal water and sewer distribution boundaries.

b. In consideration of CITY's conveyance of the Chaparral 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 Fairgrounds Parcel and more specifically described on Exhibit A. APSD will not be responsible for any improvements, including landscaping, sprinkler systems, athletic facilities or traffic studies or signals on or related to the Fairgrounds Parcel. APSD will not be responsible for any financial or other contribution toward any improvements the CITY determines to carry out on the Fairgrounds Parcel. The CITY will not be responsible for the cost, if any, of improvements to the Chaparral Parcel.

4. Equivalency of Exchange Value. The Chaparral Parcel was appraised as of 2020 at \$345,000 (\$17,500/ac.), including improvements. The Fairgrounds Parcel was originally acquired by the CITY in 1946 as part of a larger parcel. The Fairgrounds Parcel was appraised as of 2020 at \$325,000 for 24.959 acres (\$13,000/ac.). There have been no substantial modifications, improvements or changes to either the Chaparral Parcel or the Fairgrounds Parcel since 2020. APSD has determined that the costs of constructing a new educational facility on the Fairgrounds Parcel is not economically feasible due to the flood zone designations and required flood control measures required to build on the site. APSD and the CITY have concluded that the Chaparral Parcel is approximately equivalent in value to the Fairground Parcel.

5. Closing.

a. CITY's Obligations at Closing. On the Closing Date, the 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 Chaparral Parcel, executed and acknowledged by the CITY.
- (ii) Termination of Lease. A letter terminating any lease by and between APSD and the CITY relating to the Chaparral Parcel without cost to either party.

b. APSD's 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 Fairgrounds Parcel, executed and acknowledged by APSD.

(ii) Termination of Lease. APSD will accept the termination of any lease by and between APSD and the CITY relating to the Chaparral Parcel without cost to either party.

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 in writing by mutual agreement of the parties.

6. As-Is. 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. 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.

8. Non-appropriation.

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.

If APSD or the CITY determines that it does not have sufficient appropriations to perform its obligations under this Agreement in the upcoming fiscal year, with respect to APSD, or the upcoming fiscal year, with respect to the CITY, then 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.

10. Miscellaneous.

a. 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.

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

c. 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.

d. 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 executing 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.

e. This Agreement cannot be amended except in a writing 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 State Board of Finance, the parties agree to cooperate in effectuating such modifications.

f. 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.

g. 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.

h. 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.

(The remainder of this page intentionally left blank. Signature pages follow.)

CITY OF ALAMOGORDO

By: _____ Date: _____ 2023

Name: _____

Title: _____

STATE OF NEW MEXICO)
)ss
COUNTY OF OTERO)

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

Notary Public

Seal

My commission expires: _____

Approved as to form and legal sufficiency:

By: _____
Attorney for the City of Alamogordo

EXHIBIT A

Description of the Fairgrounds Parcel

EXHIBIT B

Description of the Chaparral Parcel