

Agenda Request Form

Cherokee County School District

Meeting Date
March 15, 2018

Agenda Item Number
I-1

Title
Sale of the CCSD Downtown Center
Requested Action
School Board Consideration of Superintendent's Recommendation for Approval of an Intergovernmental Sale of the CCSD Downtown Center to the City of Canton
Summary Explanation and Background
<p>Pursuant to prior authorization by the School Board, the Downtown Center (the former Canton High School and adjacent parking lot at the corner of Church and Academy Streets) was surplused and marketed for sale in Fall of 2017. Because of the public funds expended in the renovation of the CCSD Downtown Center, the property was marketed for a minimum bid of \$2,500,000. The School District received no appropriate bids during the applicable time.</p> <p>The City of Canton was granted "right of first refusal" to the CCSD Downtown Center at the time of the building "A" and "B" exchange with the School District and has indicated its desire to buy the CCSD Downtown Center pursuant to that agreement. Because this property would be dedicated to public use, the Superintendent recommends that the School Board approve the sale to the City of Canton at the specified minimum bid price of \$2,500,000.</p>
Major System Priority
Addressing Growth
Financial Impact
+\$2,500,000 for Capital Outlay Purposes
Exhibits: (List)
Intergovernmental Sales Contract

Board Action
<i>(For Official School Board Records Only)</i>

Source of Additional Information	
Dr. Brian V. Hightower	770.479.1871
Tom Roach	770.479.1406

OFFICE OF THE SUPERINTENDENT OF SCHOOLS

Approved in Open Board Meeting on: _____ (Date)

By: _____ (School Board Chairman)

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement entered into by and between **Cherokee County School District** ("Seller") and **City of Canton, Georgia** ("Purchaser") on the day of _____, 2018.

WHEREAS, the Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller certain real property in accordance with the terms and conditions hereinafter provided; and

1. **PURCHASE AND SALE.** Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy from Seller the following: (a) All that tract or parcel of land lying and being in Land Lot 166 of the 14th District, 2nd Section, City of Canton, Cherokee County Georgia described as follows: Beginning at the Southwest intersection of the Right of Ways of West Marietta Street and Archer Street, thence S23°13'45"W 64.90', thence along a curve having a radius of 761.02' a distance of 156.6' along a chord bearing S29°07'47"W a chord distance of 156.32', thence S35°01'29"W 40.44', thence N83°01'04"W 151.85', thence N80°28'29"W 106.92' to a point on the Easterly Right of Way of Academy Street, thence N5°27'17"E 230.95' to the southeast intersection of the Right of Ways of Academy Street and Archer Street, thence S84°09'28"E 194.93', thence S84°09'28"E 166.06 feet to the Point of Beginning. Said tract containing 1.7 acres more or less, together with all of the tenements, hereditaments, improvements, buildings, facilities, appurtenances, rights, easements, and rights-of-way incident thereto (collectively, the "Real Property"); and (b) all of the fixtures, machinery, and equipment owned by Seller and situated on or about the Property which is used in connection with the maintenance and operation of the Property, including the furniture and furnishings listed on Exhibit A (collectively the "Personalty"); the Real Property and Personalty collectively the "Property").

2. **PURCHASE PRICE AND METHOD OF PAYMENT.** The purchase price ("Purchase Price") of the Property shall be \$2,500,000 to be paid in cash at closing.

3. **TITLE.** Seller agrees to convey good and marketable fee simple title to the Property to Purchaser by Limited Warranty Deed. Good and marketable fee simple title is hereby defined as title which is insurable by a national title insurance company (the "Title Company") at its standard rates on an ALTA Owner Policy (the "Title Policy"), without exception other than the following "Permitted Title Exceptions": (A) zoning ordinances affecting the Property; (B) general utility, sewer and drainage easements of record upon which any buildings on the Property do not encroach; (C) subdivision restrictions of record; and (D) current city, state and county ad valorem property and sanitary taxes not yet due and payable.

4. **LEASES/SERVICE CONTRACTS.** Seller represents to Purchaser that there are no leases, management, service or other contracts that affect the Property that cannot be terminated at Closing by Purchaser at its sole discretion.

5. **SELLER'S WARRANTIES.** Seller agrees, represents and warrants that, to Seller's knowledge and belief: (A) Seller has the full right and authority to enter into this Agreement and to consummate the sale of the Property as set forth herein; (B) Seller has not received any notice and has no knowledge that the Property is or will be affected by any special assessments, condemnation, eminent domain, change in grade of public streets or similar proceedings; (C) Seller has entered into no unperformed agreement, oral or written, not referred to herein, with reference to the Property, and neither Seller nor the Property is subject to any judgement or decree of a court of competent jurisdiction, or to any lawsuit or administrative proceeding which would in any way adversely affect the Property or which would in any way be binding upon Purchaser or its successors or assigns, or which would limit or restrict in any way Seller's rights and ability to enter into this Agreement and consummate the transactions contemplated hereby; (D) Seller is a validly existing entity under the laws of the State of Georgia and the individual executing on behalf of the entity has authority to execute; (E) Seller is not aware of any notice that the Property has been constructed, occupied, used or operated in violation of any zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state or other governmental authority having jurisdiction thereof, or any private restrictive covenants affecting the Property; (F) Except for the representations and warranties set forth in this Agreement or in any of the documents delivered at Closing (the "Seller's Warranties"), this sale is made and will be made without additional representations, covenants or warranties of any kind by Seller and shall be made on an "as-is", "where-is" basis, including all faults, latent or patent.

7. **DUE DILIGENCE.**

(a) Purchaser shall have a period of fifteen (15) days from the Effective Date ("**Due Diligence Period**") to review and conduct (at Purchaser's expense) all those tests, surveys, examinations, and other studies which Purchaser may desire to conduct with the purpose of satisfying itself in its sole discretion that the Property is acceptable and satisfactory to Purchaser in its sole and absolute discretion. Upon reasonable notice, Purchaser, its architects, attorneys, engineers, contractors and other representatives shall be afforded access to the Property to inspect, measure, appraise, test and make surveys of the Property. Purchaser shall not interfere unreasonably with the operation of the Property and shall restore any area on the Property disturbed in the course of Purchaser's testing to the conditions existing prior to any tests conducted by Purchaser.

(b) Prior to the expiration of the Due Diligence Period Purchaser may notify Seller that it is terminating the agreement, and if such notice is given then this Agreement shall terminate and the parties shall have no other further obligations, rights or duties hereunder.

8. **CONDITION OF PROPERTY.** Seller represents that at Closing the improvements on the Property will be in the same condition as they are on the date this Agreement is signed by Purchaser, ordinary wear and tear excepted. Until Closing, Seller shall ensure that the Property is covered by fire and extended coverage insurance. If the Property is destroyed or substantially damaged before Closing, then Seller shall provide

to Purchaser written notice of such occurrence within ten (10) days after the date thereof, and at the election of the Purchaser: (A) this Agreement may be canceled; or (B) Purchaser may consummate this Agreement and receive an assignment of Seller's interest in any insurance proceeds as are paid or payable on the claim of loss. This election must be exercised within ten (10) days after Seller provides Purchaser written notice of the amount of the insurance proceeds, if any, which Seller will receive on the claim of loss. If Purchaser has not been so notified By Seller within forty-five (45) days subsequent to the occurrence of such damage or destruction, or by the date of Closing, whichever occurs first, Purchaser may at its option cancel this Agreement by written notice to Seller. If Purchaser fails to provide such notice to Seller, Purchaser shall be conclusively deemed to have elected to consummate this Agreement and receive an assignment of Seller's interest in such insurance proceeds as are paid or payable on the claim of loss.

9. **AGENCY DISCLOSURE.** Neither party has retained a real estate Broker, and Seller warrants that it owes no commission to any Broker for this transaction.

10. **RESPONSIBILITY TO COOPERATE.** Seller and Purchaser agree that such documentation as is reasonably necessary to carry out the terms of this Agreement shall be produced, executed and/or delivered by such parties within the time required to fulfill the terms and conditions of this Agreement.

11. **NOTICES.** All notices, requests, consents, and other communications hereunder shall be in writing and shall be personally delivered, sent by overnight (e.g. Federal Express) or same day courier service providing a return receipt, or mailed by first-class registered or certified mail, return receipt requested, with postage prepaid. Notices may also be sent by facsimile or electronic mail (with proof of transmission and receipt) between the hours of 9:00 a.m. and 6:00 p.m. local Eastern time, Mondays through Fridays, holidays excepted, provided that a copy thereof is also sent by one of the other methods permitted hereunder. Notices shall be effective when received, when refused, or when the same cannot be delivered, as evidenced on the return receipt or facsimile delivery confirmation, as applicable. Notices shall be sent to the following addresses:

As to Purchaser:

City of Canton
Attn: Billy Peppers, City Manager
151 Elizabeth St.
Canton, GA 30114

As to Seller:

Cherokee County School District
Attn: Bill Sebring
200 Mountain Brook Court, Ste. D-10

12. **TIME.** TIME IS OF THE ESSENCE WITH RESPECT TO THIS AGREEMENT.

13. **ENVIRONMENTAL CONDITIONS.** To Seller's best reasonable knowledge:

(A) The Property has never been used as a landfill for garbage or refuse, dump, stump pit, toxic waste dump or cemetery, or for the handling, generation, treatment, release, storage or disposal of chemicals or hazardous wastes or substances so as to create an environmental hazard. For purposes of this Agreement, the term "hazardous wastes or substances" shall mean petroleum including crude oil or any fraction thereof, and any substance identified in CERCLA, RCRA, or any other federal, state or other governmental legislation or ordinance identified by its terms as pertaining to the disposal of hazardous substances or waste.

(B) (i) The Property is free from any hazardous or toxic materials or wastes or similarly described substances under any applicable federal or state laws or regulation and (ii) there have been no violations or applicable "wetlands" regulations in connection with the development of the Property.

19. **CLOSING COSTS.** Unless otherwise stipulated in this Agreement, Purchaser agrees to pay at Closing: (i) Purchaser's attorney's fees (ii) all title examination and survey fees and the premiums for all title insurance commitments and policies; (iii) all recording fees; and (iv) any other charges incurred by Purchaser relating to the transactions contemplated herein. Seller agrees to pay at Closing: (i) Seller's attorney's fees;

20. **CLOSING.** The sale of the Property shall be closed ("Closing") on or before April 20, 2018, or such earlier date that is mutually acceptable to Purchaser and Seller; provided, however, if Purchaser and Seller fail to agree on a time and place, the closing shall be held on the aforesaid date at 1:00 p.m. at Canton City Hall at 151 Elizabeth St., Canton, GA 30114.

21. **POSSESSION OF PROPERTY.** The Seller shall have the right to continue to occupy the Property as it is at the time of the execution of this Agreement, and shall vacate the Property by June 30, 2018. The parties agree to execute such documents as are necessary to enable the Seller to continue to use and occupy the Property as a tenant for insurance purposes. The Purchaser shall have the right to enter onto the Property as necessary to make preparations for taking possession. Purchaser shall give Seller reasonable notice in the event that it will need to do any work in areas occupied by the Seller, and will use its best efforts to avoid interfering with the Seller's use of the Property after Closing.

22. GENERAL.

(A) Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof, and no modification of this Agreement shall be binding unless signed by all parties to this Agreement. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto.

(B) Captions. The headings at the beginning of each paragraph are for clarification purposes only and are not intended to alter the context of this Agreement.

(C) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and assigns.

(D) Governing Law. This Agreement shall be interpreted in all respects in accordance with the laws of the State of Georgia, without giving effect to conflicts of law provisions thereof.

(E) No Waiver. No failure of any party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

(F) Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an executed original hereof. A facsimile or electronic transmission of this Agreement shall be valid as if the original, and the undersigned hereby stipulate that each signature hereon shall be deemed to be an "electronic signature" within the meaning of the Uniform Electronic Transactions Act, O.C.G.A. Section 10-21-1, et. seq.

(G) Conditions Precedent. Conditions precedent to the obligation of either party to close hereunder, if any, are for the benefit of such party only, and any and all of said conditions may be waived in the discretion of the party benefited thereby.

(H) Survival of Agreement. Any condition or stipulation not fulfilled at the time of the Closing shall survive the Closing, execution and delivery of the warranty deed until such time as said conditions or stipulations are fulfilled. Seller's representations and warranties as set forth in this Agreement shall survive the Closing, the delivery of the deed and the payment of the purchase price, and shall not be deemed merged into the deed of conveyance.

(I) Closing Certifications. Seller shall deliver to Purchaser at the Closing an affidavit: (i) certifying that Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code; (ii) certifying the information required for Internal Revenue Service Form 1099; and (iii) certifying as to such other matters as may be

reasonably required by the title insurance company for issuance of a title insurance policy on the Property.

(J) Business Day. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the closing must be held, expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day. For purposes hereof, "business day" shall mean any day other than a Saturday, Sunday, or Federal holiday.

23. SPECIAL STIPULATIONS.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals as of the day and year first above written.

Purchaser: City of Canton, Georgia

By: _____
Gene Hobgood, Mayor

Approved as to form:

Date: _____

Robert M. Dyer, City Attorney

Seller: Cherokee County School District

By: _____
Kyla Cromer, Chairperson

Approved as to form:

Date: _____

Thomas A. Roach, Jr.
Cherokee County School
District Attorney

EXHIBIT "A"

Auditorium:

- 3' X 10' black and dark oak tables = 2 each
- 2'9" X 10' 1" black and dark oak podium = 1 each
- 2' X 6' dark wood grain folding tables = 35
- Executive high back burgundy cloth chairs with casters = 8 each
- 18" stacking burgundy cloth chairs = 190 each
- Chair dolly for stacking chairs = 5 each
- Dollies for folding tables = 3 each

Auditorium Kitchen:

- GE over the range microwave, model # JVM1650WH01 = 1 each
- GE electric range / oven, model # JBS27WH2WW = 1 each
- GE refrigerator with top freezer, model # GTH22KBRARWW = 1 each
- GE dishwasher, model # GSD3400G00WW = 1 each
- 6' X 3' brown Logiflex table = 1 each

First Floor Breakroom:

- Whirlpool refrigerator with top freezer, model # ET8WTEXKT0 = 1 each
- 6' X 3' brown Logiflex table = 2 each
- 18" stacking blue vinyl padded chairs = 14 each

Auditorium

- Ten microphones attached to the dais
- One microphone attached to the lectern/podium
- Plexiglass rear-projection screens (not projectors)
- Three remote-control cameras
- Antenna for wireless microphones