

# Fee Simple Acquisition Option

Project: **Land Acquisition for Metropolitan Parks and Recreation**

Property Address: **12900 Old Hickory Blvd.  
Antioch, Tennessee 37013**

Map No. **175-00-0**  
Parcel No. **024.00**

KNOW ALL MEN BY THESE PRESENTS that, for and in consideration of the mutual benefits that will accrue by reason of the hereinafter described acquisition, we/I hereby grant and give to the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metropolitan Government"), its agents or assigns, the right and option to purchase, for the consideration described below and subject to the terms set forth herein, Grantor's fee simple interest in the herein described property located in Metropolitan Nashville and Davidson County, Tennessee:

**Being Parcel 024.00, Tax Map 175-00-0, containing 64.08 acres, more or less.**

And Grantor(s) hereby agree(s), upon the Metropolitan Government's delivery of written notice of its desire to exercise said right or option (the "Notice of Exercise") at any time during the period beginning on the date hereof and ending 120 days thereafter (the "Option Period"), to convey to the Metropolitan Government, its agents or assigns, by good and sufficient Warranty Deed, the stated interest in the described tract of land. In the event the Metropolitan Government does not deliver its Notice of Exercise on or before the date of expiration of the Option Period, this instrument shall become null and void and the Metropolitan Government's option to purchase the herein-described property shall terminate. Notice of Exercise shall be delivered, in writing via U.S. Mail, hand delivery or overnight courier, to Grantor at the following address: 225 Battle Road, Antioch, Tennessee, 37013.

It is agreed that consideration paid to Grantor(s) by the Metropolitan Government will be applied consistent with any applicable lien-holders' instructions, if applicable, unless waived by said lien holders. Grantor acknowledges that the herein-described consideration, when paid to Grantor at closing, shall constitute good and sufficient consideration for this transaction. The Metropolitan Government will pay all closing costs, including title insurance.

It is agreed that when this option is executed, Grantor(s) shall vacate and give complete possession of above described property by date of deed.

It is agreed should the Metropolitan Government properly deliver its Notice of Exercise prior to the expiration of the Option Period, that Grantor(s) will be paid **Two Million Eight Hundred Seventy Seven Thousand Dollars and 00/00 (\$2,877,000.00)**, in immediately available funds by cashier's check or wire transfer to an account designated by Grantor, upon execution of the aforesaid deed to the Metropolitan Government. Grantor(s) will pay taxes for the current year (pro-rated) and all back taxes, if any, assessed on above described property.

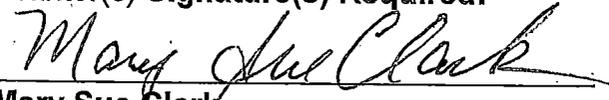
It is agreed that within ten (10) days from this agreement, the Metropolitan Government will be granted access to the property at all times for the purpose of performing an Independent Appraisal, Survey, Phase I Environmental Site Assessment, any and all inspections deemed necessary. Grantor has made, and will make, no representations or warranties to the Metropolitan Government regarding the condition of the herein-described property or the fitness of the herein-described property for the Metropolitan Government's intended use thereof, and the Metropolitan Government hereby releases Grantor from any liability related to the condition of said property.

including any liability for latent defects or environmental conditions, whether known or unknown by Grantor.

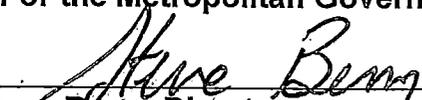
The purchase of the herein-described property is contingent upon the approval of the Metropolitan Council on or before the expiration of the Option Period, and closing of the transactions contemplated herein shall take place not later than 60 days after the Metropolitan Government's delivery of its Notice of Exercise to Grantor.

IN WITNESS WHEREOF, we/ I hereunto set our/my hand(s), and obligate ourselves/myself and our/my heirs, executors and assigns to faithfully perform this agreement, in its entirety, on this, the **9th day of February, 2018.**

Grantor(s) Signature(s) Required:

  
\_\_\_\_\_  
Mary Sue Clark  
\_\_\_\_\_  
\_\_\_\_\_

For the Metropolitan Government:

  
\_\_\_\_\_  
Steve Berry, Director  
Public Property Administration

PURCHASE AND SALE AGREEMENT

Purchase and Sale Agreement (this “**Agreement**”) is made and entered into as of the \_\_\_ day of April, 2018 between the Metropolitan Government of Nashville and Davidson County (“**Metro**”) and Wirtgen America, Inc. (“**Wirtgen**”) regarding the purchase of certain real property.

WITNESSETH:

WHEREAS, Metro is the current owner of the parcel of property located at Old Hickory Boulevard, Metro Parcel ID No. 17500002300 (the “**Park Tract**”); and

WHEREAS, Wirtgen is the current owner of the parcels of property (collectively the “**Wirtgen Tract**”) located at 6030 Dana Way, Metro Parcel ID No. 17400003000, and 6040 Dana Way, Metro Parcel ID No. 17400020900 (the “**Wirtgen Parcel 209**”); and

WHEREAS, Metro proposes to sell to Wirtgen, and Wirtgen proposes to buy from Metro an approximately 19-acre tract of property which is a portion of the Park Tract (the “**Property**”) which is shown on Exhibit A attached hereto as “19 ACRE TRACT”; and

WHEREAS, Wirtgen proposes to grant to Metro a non-exclusive easement, having the same width as Crossing Boulevard, for right of way purposes (the “**Metro Easement**”) across the Wirtgen Tract over the property shown on Exhibit A attached hereto as “EASEMENT AREA (1 ACRE)”; and

WHEREAS, Metro proposes to grant to Wirtgen an easement (the “**Wirtgen Easement**”) across the Park Tract over the property shown on Exhibit A attached hereto as “50’ ACCESS EASEMENT” for driveway access (the “**Wirtgen Driveway**”) to Crossings Boulevard Extension, (as hereinafter defined).

WHEREAS, the parties are entering into this Agreement to set forth the terms and conditions concerning the purchase and sale of the Property and conveyance of the Metro Easement.

NOW, THEREFORE, in exchange of the mutual promises of the parties as set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1) **EFFECTIVE DATE.** This Agreement shall become effective only after its final approval by the Metropolitan Council and recording with the Metropolitan Clerk (the “**Effective Date**”).

2) **PURCHASE PRICE.** The purchase price payable by Wirtgen for the Property at Closing (as defined below) shall be One Million Sixty-Four Thousand Dollars (\$1,064,000.00). The Wirtgen Easement and the Metro Easement shall both be conveyed at no cost.

3) **CLOSING.**

a) The Property shall be conveyed by Metro to Wirtgen (the “Closing”) on an “as is and with all faults” basis on a mutually convenient date not more than 30 days the Effective Date (the “Closing”), subject to reasonable extension by agreement of the parties. The Closing shall occur through the offices of Old Republic National Title Insurance Company, 201 4<sup>th</sup> Ave. N. Nashville, TN 37219 (the “Closing Agent”) in an escrow-style closing so that neither party will be required to attend the Closing in person.

b) Metro shall convey its interest in the Property by quitclaim deed approved by the Director of Law or his designee. Wirtgen shall convey the Metro Easement to Metro by Easement in form approved by the Director of Law or his designee. Metro shall convey the Wirtgen Easement to Wirtgen by Easement in form approved by the Director of Law or his designee. In addition to the foregoing, the parties shall execute such other closing documents as reasonably requested by the Closing Agent to close the intended transaction. The legal descriptions to be attached to the Property Deed and Metro Easement will be determined based upon a survey prepared by a surveyor mutually acceptable to the parties.

c) Wirtgen shall pay all transfer taxes and recording fees to record the Property Deed and the closing fee charged by the Closing Agent. Wirtgen shall also pay its own title insurance expenses and attorneys’ fees. Metro shall pay applicable taxes and recording fees to record the Metro Easement. The parties represent and warrant to each other than no brokers have assisted them with regard to the Closing.

4) **WIRTGEN EASEMENT AND DRIVEWAY.** The Wirtgen Tract adjoins the Metro Park Tract (the “Park”) along part of the southern property line of the Wirtgen Tract. Crossings Boulevard currently terminates at Dana Way. In order to provide access to and from the Wirtgen Tract, and Dana Way, Metro agrees to convey to Wirtgen the Wirtgen Easement which is a non-exclusive easement which will be 70 feet wide (inclusive of a 20 foot wide temporary construction easement over the Park Tract. The parties agree that the Wirtgen Driveway will have to bridge a creek which runs more or less north and south through Wirtgen Parcel 209 and the Park Tract. Metro agrees that it will cooperate with Wirtgen’s efforts to obtain such permits as may be necessary for the bridge. Provided, however, that nothing in this paragraph shall be construed as a waiver of Metro’s right to act in accordance with its governmental powers.

5) **NOTICES.** Notices required hereunder shall be sent by hand delivery, reputable overnight courier service (such as Federal Express or UPS), or via certified U.S. Mail, return receipt requested, and such notices shall be deemed received upon actual receipt by

the proper addressee in accordance with this Section 4 or by confirmed attempted delivery to said addressee before 5:00 p.m. local time on weekdays, excluding holidays recognized by the government of the State of Tennessee. Notices given under this Agreement shall be addressed to:

Metro: Director of Law  
Metropolitan Court House  
Suite 108 P.O. Box 196300  
Nashville, TN 37219

Wirtgen: Wirtgen America, Inc.  
6030 Dana Way  
Antioch, TN 37013  
ATTN: James McEvoy

6) **ENFORCEMENT; GOVERNING LAW.** If either party fails to perform in accordance with the terms of this Agreement, the other party shall have the right to pursue all available remedies (including, without limitation, an action for damages and/or specific performance). Any action arising from this Agreement shall be brought in the Circuit or Chancery Courts of Davidson County, Tennessee. This Agreement shall be governed by and interpreted in accordance with the laws of Tennessee.

7) **MODIFICATIONS.** This Agreement may be modified only by a written instrument signed by an authorized representative of both parties.

8) **ADDITIONAL DOCUMENTATION.** Each party shall execute such additional documentation as reasonably may be required to consummate the transactions described in this Agreement. This obligation shall survive the Closing Date as necessary to comply with the requirements of this Agreement (including, without limitation, by executing corrective documents post-Closing to conform to the requirements hereof, in each instance without additional payment or conditions other than as set forth in this Agreement).

9) **CALCULATION OF TIME.** In the event that the final date of any time period set forth in this Agreement falls on a Saturday, Sunday or legal holiday recognized by the government of the State of Tennessee, such time period shall be extended to the next available business day.

10) **INTERPRETATION.** The parties hereto acknowledge that the parties and their respective counsel have each reviewed and revised this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

11) **TIME OF THE ESSENCE.** Time is of the essence of every provision contained in this Agreement.

12) **COUNTERPARTS; ELECTRONIC COPIES.** This Agreement may be executed in any number of identical counterparts, each of which shall be considered an original, but together shall constitute but one and the same agreement.

[Continued on next page.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized officials as of the date and year first above written.

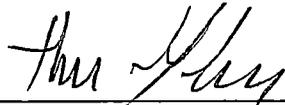
Metropolitan Government of Nashville and Davidson County

  
\_\_\_\_\_  
Director Public Property Administration

APPROVED AS TO FUNDING:

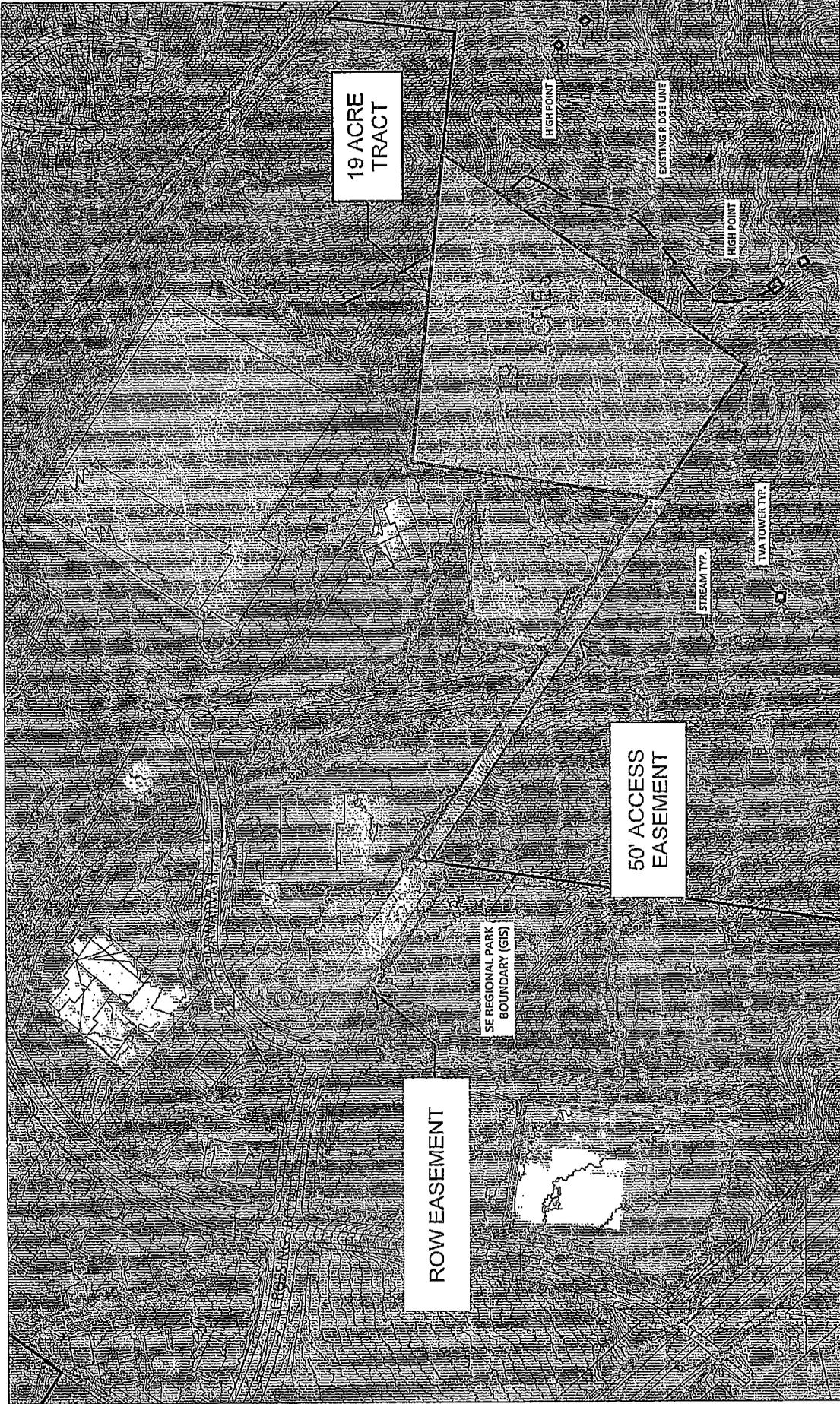
  
\_\_\_\_\_  
Director of Finance

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Assistant Metropolitan Attorney

Wirtgen America, Inc.

By:   
Name: James P. McEvoy  
Its: President + CEO



# EXHIBIT A