

RESOLUTION NO. 32344

A RESOLUTION CONFIRMING THE SURPLUS OF A FOUR THOUSAND ONE HUNDRED (4,100) SQUARE FOOT PORTION OF TAX MAP NO. 135E-K-009 ON FRAZIER AVENUE, AND TO AUTHORIZE THE MAYOR OR HIS DESIGNEE TO ENTER INTO A PROPERTY EXCHANGE AGREEMENT WITH FRANK C. KIMSEY, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE EXCHANGE OF THE FOUR THOUSAND ONE HUNDRED (4,100) SQUARE FOOT PORTION OF CITY PARCEL 135E-K-009 FOR A FOUR THOUSAND ONE HUNDRED (4,100) SQUARE FOOT PORTION OF KIMSEY PARCEL 135E-K-008, WITH THE ADDITIONAL CONSIDERATION FOR THE CERTIFICATE OF OCCUPANCY FOR THE NEW KIMSEY RESIDENCE TO BE SUBJECT TO THE CONSTRUCTION OF A FOOTPATH FROM DALTON STREET TO FRAZIER AVENUE, AND WITH REVERSIONARY RIGHTS REQUIRING THE COMPLETION OF ALL CONSTRUCTION BY JULY 1, 2028, AND TO AUTHORIZE THE EXECUTION OF THE CLOSING DOCUMENTS WITH ALL CLOSING FEES TO BE PAID BY FRANK C. KIMSEY.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby confirming the surplus of a 4,100 square foot portion of Tax Map No. 135E-K-009 on Frazier Avenue, and to authorize the Mayor or his designee to enter into a Property Exchange Agreement with Frank C. Kimsey, in substantially the form attached, for the exchange of the 4,100 square foot portion of City Parcel 135E-K-009 for a 4,100 square foot portion of Kimsey Parcel 135E-K-008, with the additional consideration for the Certificate of Occupancy for the new Kimsey residence to be subject to the construction of a footpath from Dalton Street to Frazier Avenue, and with reversionary rights requiring the completion of all construction by July 1, 2028, and to authorize the execution of the closing documents with all closing fees to be paid by Frank C. Kimsey.

ADOPTED: December 17, 2024

/mem

## PROPERTY EXCHANGE AGREEMENT

**THIS PROPERTY EXCHANGE AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and between Frank C. Kimsey (“FK”) and the **CITY OF CHATTANOOGA**, a municipality existing under the laws of the State of Tennessee (“City”).

**WHEREAS**, FK owns a fee simple interest in real property identified as Tax Map No. 135E-K-008 (the “FK Property”), as more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference;

**WHEREAS**, City owns a fee simple interest in real property identified as Tax Map No. 135E-K-009 (the “City Property”), as more particularly described in **Exhibit “B”** attached hereto and incorporated herein by this reference;

**WHEREAS**, the parties desire to exchange a 4,100 square foot portion of each property pursuant to Section 1031(a)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).

**NOW, THEREFORE**, in consideration of the premises herein contained and of other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties do contract and agree as follows:

1. Exchange. FK will convey to City a 4,100 square foot portion of the FK Property in exchange for a 4,100 square foot portion of the City Property (collectively, the “Exchange Properties”) pursuant to Section 1031(a)(3) of the Code. FK and City agree to execute all documents necessary to complete the simultaneous exchange of the properties. The parties agree that a reasonable estimate of the value of the Exchange Property is \$9,000 per each parcel portion based upon the Appraisal Report prepared by Thomas R. Carter, Certified General Real Estate Appraiser, dated April 10, 2024.

2. Tax Treatment. The exchange will be treated as a Section 1031 like-kind exchange under the Code. This Agreement is intended to comply with Section 1031 of the Code to effect a like-kind exchange. If any provision of this Agreement is inconsistent, or not in compliance with, or is contrary to the purpose of Section 1031 of the Code, this Agreement should be construed and interpreted to the extent reasonably necessary to exclude or modify such provisions to satisfy the purposes of this Agreement.

3. Hazardous Substances. City and FK represent and warrant that there has been no storage, disposal, treatment, or release of hazardous substances on the Exchange Properties during the period of ownership by City and FK, and to the best of their knowledge there has been no storage, disposal, treatment, or release of hazardous substances on the Exchange Properties during the period prior to their ownership. To the best of FK’s and City’s knowledge, no part of the Exchange Properties is being used, or has ever been used, for any manufacturing, handling, or other process involving hazardous substances. The terms as used herein, including but not limited to “hazardous substances,” shall have the broadest meaning given under applicable state and federal law. FK agrees to indemnify, defend, and hold City harmless from and against any and all claims, liabilities, lawsuits, penalties, remediation costs and expenses (including attorneys’ and consultants’ fees and costs) that City may incur or have asserted against it as a result of the presence

of any hazardous substance in, on, or under the FK Property which violates any environmental law at any time prior to Closing. The provisions of this paragraph shall survive Closing and delivery of the deed.

4. Due Diligence. Commencing on the date hereof, FK and the City each will have up to thirty (30) days (“Due Diligence Period”) in which to conduct such physical and other inspections and investigations of the respective parcels which they deem appropriate. If, prior to the expiration of the Due Diligence Period, either the City or FK notifies the other party that for a material reason it deems either of the respective parcels to be unsuitable, then the exchange of such parcel contemplated hereby will be terminated and of no further force and effect.

5. Taxes and Assessments.

(a) City Property. Real estate property taxes for 2024 are exempt from payment until the Closing Date. From and after the Closing Date, FK will be responsible for the payment of real property taxes. Water quality fees assessed for the year in which the Closing occurs (regardless of when due and payable) shall be prorated as of the Closing Date.

(b) FK Property. Real estate property taxes for 2024 shall be paid by FK. From and after the Closing Date, the real estate property taxes shall be exempt from payment. Water quality fees assessed for the year in which the Closing occurs (regardless of when due and payable) shall be prorated as of the Closing Date.

6. Conveyances. At Closing, FK and City shall convey title to the Exchange Property by Quitclaim Deeds.

7. No Representations and Warranties/Release.

(a) **No Warranty- Acceptance of the Exchange Property in its AS-IS Condition.** FK and City acknowledge that each party makes no guarantee, representation or warranty regarding the physical or environmental condition of the Exchange Property, and both FK and City expressly disclaim any and all obligation and liability to each other regarding any defects or structural damage which presently exists on the Exchange Property. FK and City hereby agree to accept the Exchange Property in its **AS-IS-WHERE-IS, WITH ALL FAULTS** condition and each party assumes all risks associated with the physical and environmental condition of the Exchange Property, regardless of the cause or date of origin of such condition, and releases all rights or claims against the other party relating to such condition or for any costs of remediation or cure of any physical or environmental condition.

8. Title. Title to the Exchange Properties shall be conveyed by duly authorized quitclaim deeds.

(a) City Property. FK will furnish its own title insurance policy in form and substance satisfactory to FK’s standards. FK shall have ten (10) business days from its receipt of the title insurance commitment in which to review same. If any title defects or other matters objectionable to FK are disclosed in the title insurance commitment, FK shall give City written notice of the same prior to the expiration of such ten (10) business day period. City shall be allowed a reasonable time, not in excess of thirty (30) days, within which to cure such defects;

provided, however, that in no event shall City's cure period extend beyond the Closing Date without the express written consent of FK. If the defects are not timely cured to FK's satisfaction, FK may waive such defects and proceed to close, or LKQ may terminate this Agreement by written notice to City, in which event each of the parties shall be released from further liability to the other.

(b) FK Property. FK shall furnish the title report on the FK Property. City shall have ten (10) business days from its receipt of the title report in which to review same. If any title defects or other matters objectionable to City are disclosed in the title report, City shall give FK written notice of the same prior to the expiration of such ten (10) business day period. FK shall be allowed a reasonable time, not in excess of thirty (30) days, within which to cure such defects; provided, however, that in no event shall FK's cure period extend beyond the Closing Date without the express written consent of City. If the defects are not timely cured to City's satisfaction, City may waive such defects and proceed to close, or City may terminate this Agreement by written notice to FK, in which event each of the parties shall be released from further liability to the other.

9. **Representations and Warranties:**

a. By the City. The City represents, warrants and covenants:

- (1) The City has the authority to convey the City Property to FK. This Agreement has been duly authorized, executed and delivered by the City to FK.
- (2) To the best of City's actual knowledge without inquiry, there is no condemnation, environmental, zoning or other proceeding either instituted or planned to be institute, which could detrimentally affect the use, development or operation of the City property, nor has the City received notice of any special assessment proceeding affecting the City Property.
- (3) There is no litigation, action, suit, or proceeding pending or threatened against the City or affecting the City Property nor is there any basis for any such proceeding which, if adversely determined, might affect the use or operation of the City Property for its intended purpose or adversely affect the ability of the City to perform its obligations under this Agreement.
- (4) There is no lease or other occupancy agreement pertaining to the City Property in effect which will bind the City Property on or after the Closing Date.

b. By FK: FK represents, warrants and covenants the following:

- (1) FK has the authority to convey the FK Property to City. This Agreement has been duly authorized, executed and delivered by FK to the City.
- (2) To the best of FK's actual knowledge without inquiry, there is no condemnation, environmental, zoning or other proceeding either instituted or planned to be institute, which could detrimentally affect the use, development or operation of the FK Property, nor has FK

received notice of any special assessment proceeding affecting the FK Property.

- (3) There is no litigation, action, suit, or proceeding pending or threatened against FK or affecting the FK Property nor is there any basis for any such proceeding which, if adversely determined, might affect the use or operation of the FK Property for its intended purpose or adversely affect the ability of FK to perform its obligations under this Agreement.
- (4) There is no lease or other occupancy agreement pertaining to the FK Property in effect which will bind the FK Property on or after the Closing Date.

10. **Performance Requirements:** As additional consideration for this Agreement, FK represents and warrants that he will construct a maintenance-free footpath from Dalton Street to Frazier Avenue, which is depicted on **Exhibit “C,”** attached hereto and incorporated by reference. Commencement of the Greenway Path shall commence no later than January 1, 2026, and shall be completed and the Certificate of Occupancy issued for the construction of a house no later than July 1, 2028. The Greenway Path shall be completed and accepted by the Department of Parks and Outdoors as a condition of the Certificate of Occupancy (“CO”) being issued by the City as a part of the Land Development Office’s process for permitting and inspecting residential structures. The materials used for the construction of the Greenway Path shall include without limitation crossties, treated lumber, or concrete. The improvements for the Greenway Path shall be included in the residential construction permit as a requirement before issuance of the CO.

11. **Reversion.** In the event that FK (i) fails to complete construction of the Greenway Path, or (ii) fails to obtain a Certificate of Occupancy for the house constructed on the City Property by July 1, 2028, title to the City Property and all improvements and fixtures located thereon shall automatically revert back to City.

12. **Closing Costs.** All closing costs shall be the responsibility of FK.

13. **Closing:** The exchange of properties shall be closed as soon as practical, but in no event later than \_\_\_\_\_ (the “Closing Date”), by Title Guaranty and Trust. (the “Closing Agent”). City and FK shall deposit with Closing Agent all instruments and monies required to complete the simultaneous exchange of the Exchange Properties. City shall notify FK of the place, date, and time of Closing.

14. **Risk of Loss.** Risk of loss or damage is assumed by FK and City for the Exchange Properties until the Closing and exchange of the properties to each party.

15. **Notice.** All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date or certification thereof delivered by or addressed to the parties as follows:

**City:** City of Chattanooga, Tennessee  
Attn: Real Property, Suite G-18  
101 East 11<sup>th</sup> Street  
Chattanooga, TN 37402

**With a copy to:** Office of the City Attorney  
100 E. 11<sup>th</sup> Street, Suite 200  
Chattanooga, TN 37402

**FK:** Frank C. Kimsey  
1511 Carroll Lane  
Chattanooga, TN 37405

16. **Binding Agreement.** City and FK agree that this Agreement shall be binding upon their respective heirs, executors, administrators, successors or assigns.

17. **Modifications.** This Agreement shall not be modified, amended, or terminated orally, and no such amendment, modification, or termination shall be effective for any purpose unless same is in writing.

18. **Controlling Law.** This Agreement shall be construed under the laws of the State of Tennessee.

19. **Time.** City and FK shall promptly carry out their obligations under this Agreement, time being of the essence.

20. **Entire Agreement.** This Agreement supersedes all prior agreements and understandings between the parties relating to the subject matter of this Agreement.

21. **Execution.** This Agreement may be executed in several counterparts, each of which, when so executed and delivered, shall constitute an original counterpart for all purposes.

22. **Survival; No Merger.** The obligations contained in this Agreement shall not merge with transfer of title but shall remain in effect until fulfilled. All representations, warranties, and obligations set forth in this Agreement shall survive the Closing and shall be fully enforceable thereafter.

**[see following page for signatures]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

\_\_\_\_\_  
Frank C. Kimsey

CITY OF CHATTANOOGA, TENNESSEE

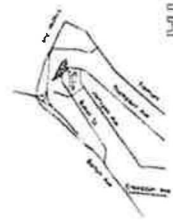
By: \_\_\_\_\_  
RICHARD J. BEELAND  
*Administrator of Economic Development*



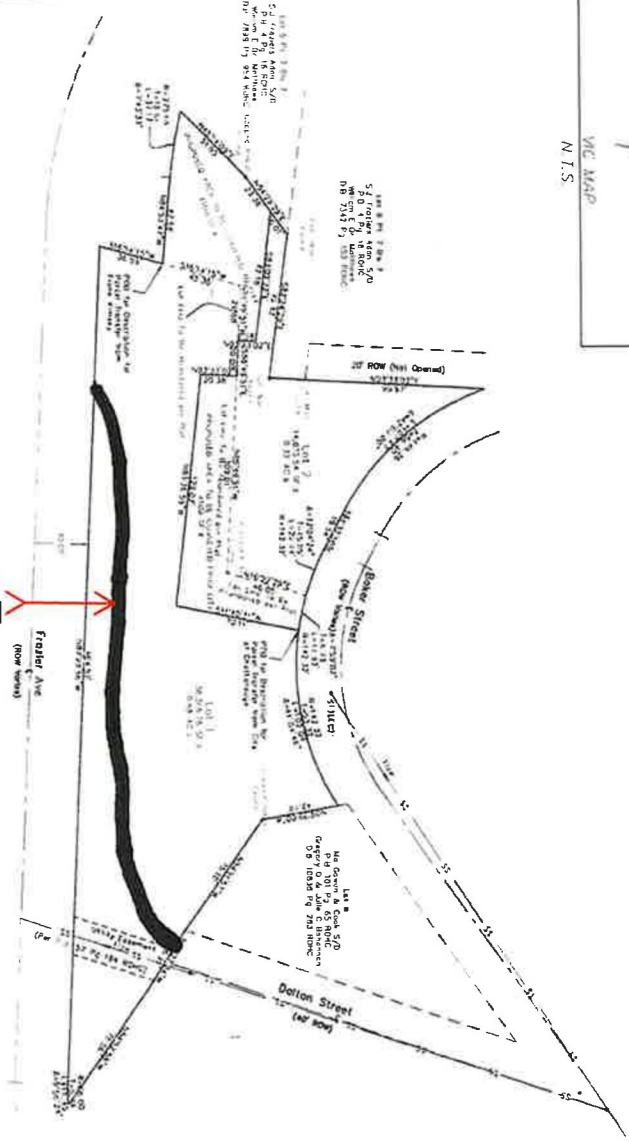




NORTH



N.T.S.



APPROXIMATE LOCATION OF THE GREENWAY PATH



Legal description text for Lot 1, including references to previous surveys and plat numbers.

Legal description text for Lot 2, including references to previous surveys and plat numbers.

CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE	
Lot 1 & 2	
PARCEL TRANSFER	
FRAZIER HEIGHTS S/D	
OWNER	PLAT NO.
DEVELOPER	DATE
RECORDING OFFICE	FILE NO.
DATE RECORDED	PLAT AREA
BY	FOR

Exhibit "C"  
Greenway Path