

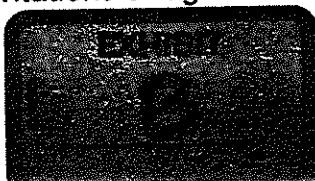
## SETTLEMENT AGREEMENT AND RELEASE

This Agreement is made and entered into this \_\_\_\_\_ day of July, 1998, by and between the City of Memphis (the "City") and John E. Rhodes, Jr. and Madelyn Andre (collectively the "Plaintiffs"). The City and the Plaintiffs are collectively referred to as the "Parties".

### RECITALS

The Parties are engaged in litigation pending in the Chancery Court of Shelby County, Tennessee under Docket Number 95409-1 originally styled Hickory Area Residents for Tomorrow (HART), as representatives of property owners within the area to be annexed, et al. v. City of Memphis, et al. (the "Court Action") involving the City's annexation of the portion of Shelby County, Tennessee known as "Hickory Hill" as is more particularly described in the pleadings in the Court Action and in the City's Ordinance No. 3711 adopted by the City Council on December 30, 1987 ("Hickory Hill" or the "Hickory Hill Annexation"). The Parties desire to resolve all claims and causes of action between and among them relating to or arising out of the Hickory Hill annexation and Court Action whether pending or potential, without further litigation or contest.

The Parties have been represented in the Court Action and in connection with the review and approval of this Agreement by independent legal counsel, and the Parties, with the advice of such legal counsel, have freely and voluntarily determined to enter into this Agreement intending to be legally bound by it. The Parties acknowledge that they are relying solely upon their judgment and the advice of their respective legal counsel in executing this Agreement, and the Parties acknowledge they are not relying upon any statements, representations or agreements, whether oral or written, of the



other party or anyone else except as expressly set out herein.

**NOW, THEREFORE**, in consideration of the mutual promises exchanged, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

### **I. SETTLEMENT OF CLAIMS**

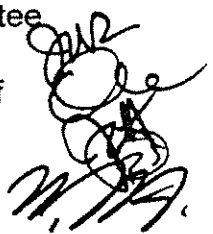
This settlement agreement resolves all claims and causes of action (including all claims for attorneys' fees or other litigation costs) arising from or related to the Hickory Hill annexation by the City of Memphis and the Court Action, including any and all opposition to or contest of the City's annexation of or right to annex Hickory Hill pursuant to Tennessee Code Annotated § 6-51-103 and the City's Ordinance No. 3711 adopted on December 30, 1987, together with the revised plan of services adopted by resolution of the City Council on June 16, 1998 ("the 1998 Plan of Services"), that have been asserted or that could have been asserted by either of the Plaintiffs or any person or entity in privity with Plaintiffs or otherwise claiming by or through Plaintiffs in any capacity against the City and its elected officials.

As additional consideration for this Agreement, the Parties agree as follows:

- a. To submit for approval by the Court in the Court Action a consent order of dismissal with prejudice that, in substance, incorporates and thereby guarantees the revised plan of services for Hickory Hill adopted by the resolution of the City Council on June 16, 1998;
- b. To submit for approval by the Court in the Court Action a consent order of dismissal with prejudice that, in substance, provides that, absent

reasonably unforeseen circumstances beyond the control of the City, children currently residing in Hickory Hill and attending Ross Elementary, Crump Elementary, Kirby Middle and Kirby High Schools will be allowed to continue to attend those schools;

- c. The City will seek and obtain the agreement and compliance of the City Board of Education with the 1998 Plan of Services and paragraphs a and b above;
- d. The City will use its best efforts, absent reasonably unforeseen circumstances beyond the control of the City, to coordinate and seek the approval of Shelby County, Tennessee, where necessary, so that children currently residing in Hickory Hill and who currently attend Shelby County schools outside of Hickory Hill will be allowed to attend the school that they would have otherwise attended for the 1998-1999 school year in the same manner as if the City's annexation had not occurred;
- e. The City will use its best efforts, absent reasonably unforeseen circumstances beyond the control of the City, to coordinate and seek the approval of Shelby County, Tennessee, where necessary, so that children currently residing outside Hickory Hill but otherwise residing in the unincorporated portions of Shelby County, Tennessee and who currently attend schools located in Hickory Hill will be allowed to attend the school that they would have otherwise attended for the 1998-1999 school year in the same manner as if the City's annexation had not occurred; and,

f. Until an official election is held that would result in the residents of Hickory Hill having representation on the City Council through an elected representative, the Mayor of the City shall create a transition committee composed of at least one, but not more than ~~three~~ <sup>five</sup> M.A.  adult residents of Hickory Hill, the two City Council persons who together will have the Hickory Hill annexation area within their City Council districts and such other persons as members as the Mayor deems advisable or appropriate. The members of this transition team shall report to the Mayor at such times and in such manner as the Mayor deems advisable or appropriate.

## II. DISMISSAL OF CLAIMS

Upon the full execution of this Agreement, Plaintiffs and the City and their respective counsel of record shall execute the consent order of dismissal, with prejudice, attached hereto as Exhibit A ("Dismissal Order") providing for the dismissal with prejudice of all claims and causes of action arising out of or relating to the Court Action that have been asserted or that could have been asserted by either of the Plaintiffs or any person or entity in privity with Plaintiffs or otherwise claiming by or through Plaintiffs in any capacity against the City and its elected officials.

## III. RELEASE OF CLAIMS

Effective as of the date the Dismissal Order is filed in the Court Action, the Plaintiffs release the City and its elected officials from any and all claims and causes of action of any kind, whether at law or in equity, including, but not limited to, actions in quo warranto or in the nature of quo warranto, arising out of or relating to the City's

annexation of Hickory Hill or the Court Action.

#### **IV. DISPUTES**

Any disputes regarding the meaning, interpretation or performance of this Agreement or the scope of the settlement or release memorialized herein shall be resolved in Part I of the Chancery Court of Shelby County, Tennessee by writ of mandamus or injunction. No dispute regarding the meaning, interpretation or performance of this Agreement, the scope of the settlement or release or any other matter relating to this Agreement shall otherwise affect the City's annexation of Hickory Hill. The City's annexation of Hickory Hill is and shall be complete as of the date of the full execution of this Agreement, and the Parties agree that the operative date of the Hickory Hill Annexation through City Ordinance No. 3711 shall be December 31, 1998.


#### **V. MISCELLANEOUS**

1. Each party represents and warrants that the person executing this Agreement on its behalf has been duly and properly authorized to do so and that this Agreement constitutes the valid, legally binding, and enforceable agreement of such party.

2. This Agreement sets forth the entire and integrated agreement between the Parties with respect to the subject matter hereof and shall be governed, construed and enforced in accordance with the laws of the state of Tennessee.

**IN WITNESS WHEREOF**, the Parties enter into this Agreement as of the date first above written.

CITY OF MEMPHIS, TENNESSEE

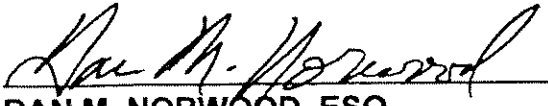
  
\_\_\_\_\_  
JOHN E. RHODES, JR.

By:   
\_\_\_\_\_  
W.W. HERENTON, MAYOR

  
\_\_\_\_\_  
MADELYN ANDRIE


APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

  
\_\_\_\_\_  
DAN M. NORWOOD, ESQ.

ATTORNEY FOR THE PLAINTIFFS

  
\_\_\_\_\_  
J. N. FAIRES, ESQ.

  
\_\_\_\_\_  
OSCAR C. CARR, III, ESQ.

  
\_\_\_\_\_  
JONATHAN C. HANCOCK, ESQ.

ATTORNEYS FOR THE CITY OF MEMPHIS

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**PLAN OF SERVICES  
SOUTHEAST MEMPHIS  
STUDY AREA #33**

**I. POLICE**

1. Upon annexation, the City of Memphis will begin patrolling, providing radio response to calls and other routine police services within the annexed area. The City will assign six (6) patrol officers for the 14.1 square mile annexation area at all times and twelve (12) officers for the area during the hours between 5:00 p.m. and 1:00 a.m. The transition between the Shelby County Sheriff's Department and the Memphis Police Department will be coordinated to ensure no interruption of police services within the area.

2. Upon annexation, the City of Memphis will provide specialty police services within the annexed area including, but not limited to, the aviation squad, the 24 hour Felony Response Squad, a computerized communication system, the canine squad, police service technicians, marked traffic units, the hostage negotiation team, and the crisis intervention team to the annexation area. In addition, all available crime prevention programs including, but not limited to, those relating to personal safety, child safety, robbery prevention, and neighborhood watch programs will be available in the annexed area upon annexation upon the same basis as other areas within the City of Memphis.

**II. SCHOOLS**

1. The City of Memphis, under previous agreements with the Shelby County Board of Education, is currently serving approximately 2,100 students residing in the annexed area. Those students residing in the annexed area that are currently served by the Memphis City Schools under the previous agreement with the Shelby County Board of Education will upon their election to do so and the absence of circumstances not presently anticipated, continue to attend the Memphis City Schools they are presently attending upon annexation of the area. These students will, upon their election, be afforded open enrollment opportunities to any other school within the City System, in accordance with existing Board of Education policies for enrollment.

2. The Shelby County schools located within the annexed area are Kirby High School, Kirby Middle School, Crump Elementary School and Ross Elementary School. These schools, under existing agreements between the Shelby County and Memphis Boards of Education, will be transferred to the Memphis City Schools Board of Education upon annexation. The students residing within the annexed area currently attending these schools will be eligible to continue to attend Kirby High School, Kirby Middle School, and Crump and Ross Elementary Schools in the absence of circumstances not presently anticipated; or to attend any other school in the City school system, in accordance with existing Board of Education policies for enrollment. Students from the annexed area presently attending Shelby County schools other than those listed above will be afforded open enrollment opportunities to any school within the City system, in accordance with existing Board



of Education policies for enrollment, or, upon payment of tuition and agreement with the Shelby County Board of Education, may attend any school in the County system.

3. The Memphis City Schools Board of Education and the City of Memphis have determined to construct three (3) new elementary schools and (1) new middle school within the annexed area to serve the students within the annexed area and to relieve the existing overcrowded conditions at the schools currently attended by these students. These facilities will be constructed no later than sixty (60) months following annexation.

4. Upon annexation, the Memphis City Schools Board of Education will provide to all students residing in the annexed area, in accordance with current policies, all services currently provided including specialized programs for the intellectually gifted (CLUE), optional schools (performing arts, medical/engineering, open education, pre-engineering, etc.), the Orff music program, specialized programs for the handicapped, and programs for students who are at risk academically.

### **III. FIRE SERVICE**

1. Upon annexation, fire protection will be provided to the annexed area by the City of Memphis using personnel and equipment of the Memphis fire suppression force within the limits of available water and distance from fire stations. The transition between the Shelby County Fire Department and the Memphis Fire Department will be coordinated to ensure no interruption of fire services within the annexed area.

2. Upon annexation, the City of Memphis fire suppression force will occupy and renovate the County Fire Station located at 6675 Winchester Road. This station will be designated as City Fire Station #52. The utilization of this station by the City will be coordinated with the Shelby County Fire Department to ensure no interruption of fire protection in the nearby areas of the County that are not annexed.

3. Upon annexation, or within six months thereof two additional temporary fire stations will be constructed, staffed and equipped. These stations will be designated as Fire Stations Nos. 53 and 55. Fire Station #53 will be located at a site owned by the City of Memphis near Hickory Hill and Raines Roads. Fire Station #55 will be constructed in the vicinity of Germantown Road Extended and Cutter Mill Roads. The construction of the permanent facilities at these locations will be completed within twenty-four (24) months following annexation.

4. Upon annexation, the City of Memphis will provide to the annexed area services in addition to fire protection including, but not limited to, fire prevention and inspection services, commercial and industrial fire training, free smoke detector installation for the elderly, invalid listing and engineering services in relation to construction fire code compliance.



5. Upon annexation, the City of Memphis will provide a fire hydrant maintenance program and emergency services as appropriate during power outages.

#### **IV. EMERGENCY MEDICAL SERVICES**

1. Upon annexation, emergency medical services will be provided to the annexed area by the City of Memphis, including ambulance and paramedic services. Emergency medical services will be provided from fire station #52 located at 6675 Winchester Road as well as from other Memphis fire stations adjacent to the annexed area. The transition from County service to City service will be coordinated to ensure there is no interruption in service.

#### **V. WATER**

1. Upon annexation, water for domestic, commercial and industrial use will be provided at City rates using existing lines. In addition, as needed, the City of Memphis will purchase any lines owned by the Shelby County Board of Utilities located within the annexed area or construct such new lines as necessary to maintain current City of Memphis standards.

2. Upon annexation, the City of Memphis will construct any necessary water lines and install all fire hydrants as necessary to meet the standards established by the City of Memphis for fire protection.

3. Upon annexation, the rate charged by Memphis Light Gas & Water for water services to residents of the annexed area will decrease to the same rate as that charged to the residents of the City of Memphis.

#### **VI. ELECTRICITY**

1. Upon annexation, the Memphis Light, Gas & Water Division will provide electrical service to the annexed area utilizing the existing distribution system.

2. Upon annexation, any new lines necessary for electrical service within the annexed area will be installed in accordance with City of Memphis policies in effect at the time of such installation.

3. Upon annexation, the rate charged by Memphis Light Gas & Water for electrical services to residents of the annexed area will decrease to the same rate as that charged to the residents of the City of Memphis.

## **VII. GAS SERVICE**

1. Upon annexation, the Memphis Light, Gas & Water Division will provide gas service to the annexed area utilizing the existing distribution system.
2. Upon annexation, any new lines necessary to provide gas services within the annexed area will be installed in accordance with City of Memphis policies in effect at the time of such installation.
3. Upon annexation, the rate charged by Memphis Light Gas & Water for gas services to residents of the annexed area will decrease to the same rate as that charged to the residents of the City of Memphis.

## **VIII. SEWERS**

1. Upon annexation, where needed, construction of new collector sewers in the previously developed portions of the annexed area will be completed in accordance with priorities set by the governing body of the City of Memphis through the Capital Improvement Program. Residences and commercial and industrial properties will be connected to those sewers in accordance with current City of Memphis policies.
2. Upon annexation, additional interceptor and trunk sewers will be constructed as warranted by the progress of land development in the annexation area.
3. Upon annexation, drainage improvements in the previously developed portions of the annexation area will be made in accordance with priorities set by the governing body of the City of Memphis through the Capital Improvement Program and the current City of Memphis policies.

## **IX. SEWAGE TREATMENT**

1. Upon annexation, wastewater from the existing and newly constructed sewers will be treated at the City of Memphis' South Treatment Plant in accordance with state and federal regulations.
2. Upon annexation, the City of Memphis will provide improvements to the sewer system in accordance with priorities set by the governing body of the City of Memphis through the Capital Improvement Program.

## **X. REFUSE COLLECTION AND DISPOSAL**

1. Upon annexation, refuse, trash and garbage collection will be provided by the City of Memphis in the annexed area including curbside pickup in accordance with the City's existing

standards.

2. Upon annexation, City of Memphis facilities for the disposal of solid wastes will be available for receipt of solid wastes from the annexed area. These facilities will be made available to the annexed area on the same basis as presently in effect for City residents.

3. Upon annexation, the City of Memphis will provide to the annexed area regularly scheduled once weekly curbside garbage collection and trash pickup services.

4. Upon annexation, the City will provide additional sanitation services to the annexed area including regularly scheduled street sweeping, the cutting of weeds on rights-of-way and vacant lots, the clean-up of illegal dumps, the collection of roadside litter, and the provision of litter containers at areas of high pedestrian density within the annexed area.

## **XI. STREETS**

1. Upon annexation, the City of Memphis will provide emergency maintenance for streets within the annexed area including repair of hazardous chuck holes, the implementation of measures necessary to control traffic flow, and other maintenance as required to maintain the same standard for streets in the annexed area as for those in the City.

2. Upon annexation, routine maintenance will begin on the streets in the annexed area to bring them into conformity with the maintenance standards for streets in the City.

3. Upon annexation, the City of Memphis will begin the reconstruction and resurfacing of streets, installation of storm drainage facilities, construction of curbs and gutters and other such major improvements within the annexation area as the need thereof is determined by the governing body of the City of Memphis. These improvements will be accomplished through inclusion in the Capital Improvements Program of the City of Memphis and the provisions of the Subdivision Regulations.

## **XII. PLANNING AND ZONING**

1. Upon annexation, planning, zoning and subdivision regulations for the unincorporated area of Shelby County as contained in the Joint Ordinance and Resolutions Numbers 2524, 3064 and 3352 respectively, and as they may be amended, are also the planning, zoning and subdivisions regulations for the City of Memphis. The services provided by the Office of Planning and Development, the Land Use Control Board and the Board of Adjustment will continue to be the same in the annexed area following annexation. The existing zoning of the annexed area will be maintained until the need for change is determined by the governing body in accordance with the Zoning Ordinance.

### **XIII. STREET LIGHTING**

1. Upon annexation, installation of street lighting will begin with completion estimated to take twenty-four (24) months in those portions of the annexed area that are substantially developed with commercial and residential uses in accordance with current City of Memphis standards.

2. In portions of the annexed area that are developed after the effective date of the annexation, street lighting will be installed in accordance with City policies in effect at the time of such development.

### **XIV. RECREATION**

1. The Memphis Park Commission and the City of Memphis will construct within the annexed area five (5) additional neighborhood parks, each approximately twenty (20) acres in size, and one (1) neighborhood park approximately ten (10) acres in size, dependent on the availability of land. These parks will be constructed within twenty-four (24) months following annexation. The neighborhood parks will offer such facilities as tot lots, play apparatus, sports fields, paved multi-purpose courts, passive recreation areas and parking in accordance with the current City of Memphis standards. Each park will be appropriately landscaped. The parks will offer the full array of recreation programming currently offered to City residents.

2. Upon annexation, the 8.9 acre Flowering Peach Park now in existence will further be developed to serve the population of its neighborhood in accordance with the current standards of the City of Memphis.

3. The Memphis Park Commission and the City of Memphis have determined two (2) recreational community centers will be constructed to serve the annexation area within twenty-four (24) months following annexation. Each community center will be designed to serve the surrounding community of 20,000-25,000 residents and will offer a full range of indoor recreational activities and programs currently in existence at other City of Memphis recreational centers. The community centers will be used by children as well as adults and senior citizens.

## **XV. MISCELLANEOUS**

### **A. Code Enforcement**

1. Upon annexation, all City of Memphis administrative, health, construction codes and similar services and regulations will apply to the annexed area.

### **B. Animal Control**

1. Upon annexation, the City of Memphis will provide animal control services to the annexed area including enforcement of Memphis dog licensing and leash laws, complaint response, rabies vaccinations for dogs and cats and other animal control activities.

### **C. Emergency Management**

1. Upon annexation, or within six months thereof, the Emergency Management Agency will install three (3) additional emergency warning sirens to provide complete coverage of the annexation area.

### **D. Traffic Signalization and Street Signage**

1. Upon annexation, or within 6 months thereof, traffic signals, street signs, street markings and other traffic control devices will be installed as the need thereof is established by appropriate study and traffic standards.

### **E. Motor Vehicle Inspection**

1. Upon annexation, the City of Memphis will provide motor vehicle inspections to residents of the annexed area including emission control inspections and a safety check of each vehicle.