

Naming Rights Agreement

This Naming Rights Agreement, (“Agreement”), is made as of March 12, 2018, (“Effective Date”), by and between Community School District Number 205 for Knox and Warren Counties, (“District 205”), and The Farmers and Mechanics Bank, an Illinois banking corporation, (“F&M”), (collectively, “The Parties”).

WHEREAS, District 205 is the owner of certain land and improvements located in Galesburg, Knox County, Illinois, known generally as the Galesburg High School, and more specifically for the purposes of this Agreement as the F&M Bank Stadium, Van Dyke Athletic Field and a surrounding stadium, weight rooms, tennis courts and athletic complex and facilities;

WHEREAS, District 205 is and has been actively engaged in Operation Rebuild-Achievement, which encompasses renovation and enhancement of District 205’s existing facilities and constructing new facilities;

WHEREAS, with the reduction of State of Illinois and federal funding for necessary educational programs, there is a dire need for additional resources to continue the quality educational experience that District 205 has provided for its students since its formation in 1863;

WHEREAS, F&M desires to partially supplement traditional government revenue sources for the educational and extracurricular programs of District 205 by making a generous gift to District 205 in exchange for certain Naming Rights and Ancillary Benefits as hereinafter provided;

WHEREAS, District 205 is agreeable to grant certain Naming Rights and Ancillary Benefits to F&M in recognition of F&M’s gift in accordance with District 205 policy and as further defined in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and consideration in the Agreement as described hereinafter, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District 205 and F&M hereby agree as follows:

Section 1 – Recitals

1.01. The recitals of this Agreement are hereby made a part of this Agreement by reference.

Section 2 – Defined Terms

2.01. “Ancillary Benefits” means certain benefits and allowance granted by District 205 to F&M not included within the Naming Rights to certain Venues owned and operated by District 205 and defined more thoroughly in Section 3.

2.02. “Branding Materials” means inventory and other certain items used by F&M related to the Naming Rights granted under this Agreement to support the brand exposure of F&M at events more fully outlined in this Agreement.

2.03. “Designations” means marketing slogans which may be used by the Parties in conjunction with this Agreement, such slogans to be amended from time to time by a mutual agreement between the Parties herein, including, but not limited to, “The Official Bank of District 205.”

2.04. “Name” means the official word, term or phrase by which the Venue will be called as of the Effective Date.

2.05. “Naming Rights” means the exclusive license to name the Venue pursuant to the terms of this Agreement.

2.06. “Signage” means all fixed, permanent signage, digital or otherwise, located inside or outside of the Venue, and all parking lots and roadways associated therewith, including but not limited to digital signage, videoboards, fixed panels, exterior and interior displays, and signage in or around tunnels, concourses, concessions, and facility entries/exits. Signage shall also include any temporary signage at District 205 athletic events utilizing the Venue.

2.07. “Term” of the Agreement means a term of ten years plus any extension for an additional period as agreed upon by the Parties.

2.08. “Venue” means the stadium complex surrounding VanDyke Athletic Field.

2.09. “Venue Marks” means the Name, Logo and/or any combination of the two.

Section 3 – Naming Rights and Ancillary Benefits

3.01. During the Term of this Agreement, District 205 hereby grants to F&M the exclusive license to name the Venue pursuant to the terms herein, (“naming rights”). As of the Effective Date, the official name of the Venue will be “F&M Bank Stadium,” unless amended or changed in accordance with this Agreement. The Parties agree that the Naming Rights shall not affect the designation of the playing surface within the Venue, and the same will remain “VanDyke Athletic Field.” The Parties agree that F&M shall have the right of first refusal to sponsor any event held in the Venue.

3.02. During the Term of this Agreement, the Parties agree that F&M will develop, at F&M’s expense, a graphic design incorporating the Name to be used as the primary logo associated with the Venue, (“Primary Logo”). F&M may also use this Primary Logo for ancillary marketing and promotional purposes pursuant to this Agreement. The Primary Logo may be altered at any time at F&M’s expense.

3.03. In connecting with the Naming Rights granted to F&M herein, F&M will be entitled to have certain Signage or other forms of exposure of the Venue Marks placed on, in or

around the Venue. As of the date of this Agreement, the Parties agree that the Signage shall consist of a sign inside the stadium complex that will be located next to the fitness room at the north end of the football field, a sign at the main entrance located at the south end of the Venue, a sign at the entrance located at the northwest corner of the Venue, signage at the parking areas adjacent to the Venue, and all existing signage currently displaying F&M Bank logos. F&M shall have the right, at its expense, to include the Venue Marks on any additional Signage, digital or otherwise, installed by District 205 after the date of this Agreement. Any and all Signage may be altered at any time at F&M's expense with prior District 205 approval.

3.04. In connection to the Naming Rights granted to F&M herein, District 205 agrees to support the brand exposure of the Venue Marks through the following branding channels, ("Branding and Collateral Materials"):

a. **Website and Digital Media.** As of the Effective Date, District 205 will list F&M as the "Official Bank of District 205" on their webpage with a link to F&M's official website. District 205 shall agree to promote the Venue and its Name through any social media outlets maintained by District 205 including, but not limited to, Facebook pages and Twitter accounts. District 205 agrees that F&M may use its name in any and all online promotions, press releases or advertising.

b. **Printed Materials.** As of the Effective Date, District 205, at District 205's expense, will cause the Venue Marks to be incorporated and used in the printed business, marketing, promotional and press materials of the Venue, including, but not limited to, game and event tickets, programs, or press releases. District 205 agrees that it will cause F&M to be listed in such materials by the Designation, "The Official Bank of District 205." District 205 agrees that F&M may use its name in any and all printed material promotions, press releases or advertising.

c. **Guest Services.** As of the Effective Date, District 205 agrees to allow F&M, at their option and expense, to place any Venue Marks on any and all concessions material, including, but not limited to, beverage cups, napkins, popcorn bags or merchandise bags distributed inside the Venue. F&M will also have an option to provide a logoed stamp to be used to identify those admitted into the Venue for events. Additionally, F&M employees shall be permitted to volunteer at concession services or gate admissions when permitted by District 205 policy.

d. **Promotional Items.** F&M agrees to provide, at its own expense, promotional items for distribution at Venue events through giveaways, sponsored contests or other distributions taking place either during the game or event or at a designated area within the Venue. Such items may include, but are not limited to, t-shirts, miniature footballs or basketballs. District 205 agrees that no other financial institution shall be a provider of promotional items to avoid duplication of sponsors. Additionally, District 205 agrees to allow F&M access to school buildings to distribute marketing materials to faculty and staff as is typically allowed by District 205 to other organizations and at agreed upon times through the Term of this Agreement. This would be the same access provided to other parties under equal access rules.

3.05. The Parties agree that each will make a reasonable effort during the Term of this Agreement to identify the Venue by its Name and Venue Marks in all written or oral references to the Venue and with respect to any game or event scheduled to take place at the Venue, including, but not limited to, all official documents, press releases and other radio or public announcements. The Parties also agree that each will make a reasonable effort during the Term of this Agreement to cause media broadcasters, advertisers, promoters, sponsors or any other third party to identify the Venue by its Name and Venue Marks, provided that any failure of any third party or parties to refer to the Venue by its Name and Venue Marks shall not constitute a breach of this Agreement. District 205 agrees that it will request its employees and any third parties to refer to F&M by the Designation, “The Official Bank of District 205” and to the Venue as “F&M Bank Stadium, Home of Van Dyke Field,” or “Van Dyke Field at F&M Bank Stadium,” in such broadcasts, promotions or advertisements.

3.06. District 205 agrees to permit F&M a ticket allowance of six tickets for F&M employees, their families, or their designees for any games or events held in the Venue. Additionally, District 205 agrees, to the extent District 205 has the ability to permit such access, to permit F&M to use the facility colloquially known as the “Cardio Room” as a suite for private gatherings during Venue events at the rate of \$1,000 per event or the rate typically charged by GHS Boosters, whichever is less. The rate to be charged to F&M shall be the same rate that is charged to any other group approved by District 205. GHS Boosters shall be the party responsible for scheduling, receiving payment, and operating said events. All food, beverages, catering setup, and clean-up will be the responsibility of the company renting the space, pursuant to District 205 policy. Once per year during the Term of this Agreement, F&M shall have the right to host an event in the “Cardio Room” at no charge, on a date to be determined by the parties.

3.07. District 205 retains the right to offer, grant, or sell the right to name any subordinate portion of the Venue (“Subordinate Naming Rights”), to any third party other than a competing financial institution. District 205 agrees to maintain current bank accounts with F&M, explore the feasibility of the transfer of any monies currently held in other financial institutions to F&M or its trust department, and allow F&M the opportunity to be the sole provider of ATM services at the Venue. District 205 agrees to refrain from issuing a formal Request for Proposal (“RFP”) for any deposit services during the Term of this Agreement, but is free to solicit a market analysis for the same.

Section 4 – Term

4.01. The Term of this Agreement will begin on the Effective Date and continue until June 30, 2028 (“Expiration Date”), unless extended or terminated in accordance with the terms herein.

4.02. If F&M is not in default of this Agreement, F&M will have an option to extend the Term of this Agreement for an additional period as agreed upon by the Parties. F&M will provide District 205 notice by March 1 of the Expiration Year of its intent to exercise its Option to Extend, which shall be for a period not longer than one year from the end of the current

agreement. If no notice is received by March 1, 2028, F&M will be deemed to have conclusively declined its Option to Extend and District 205 will be free to enter into negotiations with third parties regarding the purchase of the Venue Naming Rights following the Expiration Date of this Agreement.

4.03. In the event that F&M declined its Option to Extend, District 205 agrees that F&M shall have the right of first negotiation for a new contract to purchase the Venue Naming Rights. If no new Agreement is reached within ninety days of F&M's exercise of its Right of First Negotiation, District 205 will be free to enter into negotiations with third parties regarding the purchase of the Venue Naming Rights following the Expiration Date of this Agreement.

Section 5 – Fees and Costs

5.01. In consideration of the Naming Rights and Ancillary Benefits granted by District 205 herein, F&M agrees to pay a Naming Rights Fee on or before the Effective Date of the given year, following the receipt of an Invoice from District 205 at least thirty days prior to the effective date, in the amounts set forth in the table below. This payment will be due July 1, 2018, and each July 1 thereafter until paid in full.

<u>Year</u>	<u>Naming Rights Fee</u>
2018-2019	\$25,000.00
2019-2020	\$25,000.00
2020-2021	\$25,000.00
2021-2022	\$25,000.00
2022-2023	\$25,000.00
2023-2024	\$25,000.00
2024-2025	\$25,000.00
2025-2026	\$25,000.00
2026-2027	\$25,000.00
2027-2028	\$25,000.00

Upon any termination of this Agreement other than a lawful termination District 205 as a result of a default by F&M, F&M shall be entitled to a pro rata refund of the Naming Rights Fee for the remaining portion of the Term for which the Naming Rights Fee had been paid.

5.02. In consideration for the above fee, District 205 agrees to make a good faith effort to continue funding programs which were previously funded by F&M, at the amounts and purposes set forth in **Exhibit 1**.

5.03. F&M agrees to bear the costs of the development of Venue Marks and the preparation, production, mounting and installation of any and all signage at the Venue or surrounding areas. District 205 agrees to bear the cost of maintaining, including but not limited to the repair or replacement of structural elements of, mounted or installed Signage at the Venue, as well as the cost of display of electronic signage. If F&M determines that any signage needs refreshing, such as painting or the replacement of lettering, F&M shall bear that cost.

Additionally, F&M agrees to bear the cost of any Primary Logo or Venue Mark change brought about by a subsequent name change as well as the cost of any promotional materials or giveaways brought into the Venue by F&M. District 205 agrees to bear the cost for any Branding or Collateral materials produced by District 205 such as those set forth in Section 3.04(a), (b) and (c).

Section 6 – Intellectual Property and Ownership

6.01. The Parties agree that F&M shall own all right, title and interest in any of the Venue Marks. Through this Agreement, F&M hereby grants District 205 a limited, non-exclusive, royalty free and non-transferable license to use the Venue Marks in a manner more fully described herein. Any use or display of the Venue Marks will be approved by F&M prior to said use or display.

Section 7 – Confidentiality

7.01. F&M and District 205 acknowledge that, through the course of performance of this Agreement, each party may have access to information which relates to the other party's business, gives the other party a competitive advantage and/or is a "trade secret." The parties agree to keep all such information in strict confidence and will not use or disclose such information, directly or indirectly, both during and after the Term of this Agreement, except as may be necessary during the course of performance of the terms of this Agreement.

Section 8 – Defaults and Remedies; Termination

8.01. In the event F&M fails to pay any installation of the Naming Rights Fee when due, and such a failure continues for a period of fifteen days after written notice is given to F&M, or in the event F&M fails to comply with any obligations herein contained and such failure continues for a period of thirty days after written notice is given to F&M, District 205 shall be entitled to terminate this Agreement on a date not less than ninety days after the date of default.

8.02. In the event District 205 fails to comply with any obligations herein contained, F&M shall demand District 205 cure the failure to comply within ninety days. If such failure is not curable, or District 205 fails to cure the failure, F&M shall be entitled to terminate this Agreement on a date not less than ninety days after the date of default, and shall be entitled to the pro rata reimbursement for the remaining portion of the Term for which the Naming Rights Fee had been paid.

8.03. If either party or any of its officers, directors, board members or superintendents commits any act which, in the reasonable opinion of the other party, would disparage or impair the reputation and integrity of the other party, including, but not limited to, any criminal indictment, ethical violations or any other act of moral turpitude, the other party shall have the right to terminate this Agreement upon thirty days written notice.

8.04. Unless otherwise provided in this Agreement, if performance under this Agreement is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the Parties, including, but not limited to, fire, flood, epidemic, earthquake, tornado, wind storm, explosion, act of god, strike or labor dispute, (a “Force Majeure”), the restricted party will not be in breach of this Agreement and the performance or obligation of such party will be excused for a period of time equal to the period during which the Force Majeure prevents such performance. If the Force Majeure results in the damage or destruction of the Venue to the extent that the games or events at the Venue must be cancelled or rescheduled, and repair or reconstruction of the Venue will take longer than ninety days from the time District 205 knows or should have known of the damage or destruction, F&M shall receive a pro rata reimbursement equal to the number of games or events cancelled during which time the repairs and reconstructions took place.

Section 9 – Mediation/Arbitration

Mediation

9.01. In the event any controversy arising under this agreement is not resolved by informal negotiations within thirty days after either party requests such negotiations, the parties shall attempt to select a mediator. If they cannot agree on a mediator, then the case shall be referred to the nearest office of the American Arbitration Association for mediation; that is, an informal, nonbinding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the case.

9.02. The parties are free to select any mutually acceptable panel member from the list of mediators at the American Arbitration Association. If the parties cannot agree or have no particular choice of mediator and simply request that the American Arbitration Association assign one to the case, then a list and resumes of available mediators, numbering one more than there are parties, will be sent to the parties, each of whom may strike one name leaving the remaining name as the mediator. If more than one name remains, the mediator shall be selected by the Administrator of the American Arbitration Association from the remaining names.

9.03. The mediation process shall continue until the case is resolved or the mediator makes a finding that there is no possibility of settlement through mediation or either party chooses not to continue further.

Arbitration

9.04. If the dispute cannot be resolved through mediation, then the following arbitration provisions shall apply.

9.05. All claims, disputes and other matters in question arising out of, or relating to this contract or the breach thereof, shall be decided by binding and mandatory arbitration in accordance with the rules of the American Arbitration Association then obtaining unless the parties mutually and in writing agree otherwise. This agreement to arbitrate shall be specifically enforceable under the Uniform Arbitration Act, 710 ILL. COMP. STAT. §§5/1 *et seq.*

9.06. Notice of the demand for arbitration shall be filed in writing with the other party to this agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.07. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

Section 10 – Miscellaneous Provisions

10.01. All notices, offers, consents or other communications between the Parties required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally or delivered by U.S. Mail and addressed to the address of the intended recipients at the following address:

The Farmers and Mechanics Bank
c/o Its President
21 East Main Street
Galesburg, Illinois 61401

Community Unit School District 205 for Knox and Warren Counties
932 Harrison Street
Galesburg, Illinois 61401

Any party may change its address by giving notice in writing stating its new address to the other party.

10.02. No party to this Agreement shall be or become the agent of any other party for any purpose in connection with the performance of any part of this Agreement. Neither party shall be held liable for the act or omissions of the other party. This Agreement is not to be construed as a franchise agreement and it does not create a partnership or a joint venture. Nothing contained herein shall be construed to give F&M any control over or responsibility for the operation of the Venue or any other aspect of District 205.

10.03. No delay or omission of any party to exercise rights or powers under this Agreement shall impair any such right or power or shall be construed to be a waiver of any default or acquiescence of said default. No waiver of any default shall be construed, taken or held to be a waiver of any other default, or waiver, acquiescence in or consent to any further or succeeding default of the same nature.

10.04. In the event that either party is required to commence any legal proceeding to enforce the provisions of this Agreement or to seek any other legal remedy, each party shall be responsible for its own attorneys fees incurred in connection with said proceeding.

10.05. This Agreement and the Exhibits attached hereto contain the entire agreement and understanding between the Parties and supersedes any prior understandings and oral or written agreements between them respecting this subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement or its Exhibits.

10.06. As the Parties have participated jointly in the preparation of this Agreement, the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this contract. The terms and provisions of this contract shall be construed fairly as to all parties hereto and not in favor of or against any party, regardless of which party was generally responsible for the preparation of this contract.

10.07. This Agreement shall be interpreted under the laws of the State of Illinois, with venue in Knox County, Illinois. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application thereof to any Party or circumstance is prohibited by applicable law, that provision shall only be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, or the application of such provisions to other Parties or circumstances.

10.08. The terms and details of this Agreement shall inure to the benefit of and be binding on the successors in interest of both Parties.

10.09. The use of the masculine, feminine or neuter gender and the use of the singular and plural shall not be given the effect of any exclusion or limitation herein, and the use of the word “person” or “party” shall mean and include any individual, trust, corporation partnership or other entity.

10.10. All section titles and captions contained herein are for convenient reference only and shall not be deemed a part of the context of this Agreement.

10.11. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed part of the Agreement.

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Section 11 – Signatures

11.01. The Parties have executed this Agreement as of the date above-written.

Dated: _____, 2018.

Doug Sanders, President
The Farmers and Mechanics Bank

Dated: _____, 2018.

Tianna Cervantez, President
Board of Education
Community Unit School District 205

EXHIBIT 1

The entities identified below previously received annual donations from F&M Bank in the amounts listed. Pursuant to Article 5.02 of the Naming Rights Agreement, the District shall continue funding the entities listed below (provided that, during the term of this agreement, these specific items are still in existence and in use by the District), in similar amounts when possible, from F&M Bank's annual \$25,000 distribution. The District shall communicate the agreement to the entities identified below.

Booster Club	\$2,500.00
Public Schools Foundation	\$ 500.00
Vocal Music Dept.	\$ 100.00
GHS Band Program	\$ 100.00
Lombard-PBIS Program	\$ 100.00
GHS Project Graduation	\$ 150.00
GHS Yearbook Ad	\$ 40.00
EverFi (Financial Literacy)	<u>\$4,000.00</u>
TOTAL	\$7,490.00