

RESOLUTION NO. 06-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE EXCHANGE OF PROPERTY WITH THE MESQUITE INDEPENDENT SCHOOL DISTRICT (“MISD”) FOR THE RECONSTRUCTION OF RUTHERFORD ELEMENTARY SCHOOL; AND AUTHORIZING THE MAYOR TO EXECUTE THE EXCHANGE AGREEMENT WITH THE MISD FOR SUCH PURPOSE.

WHEREAS, the City of Mesquite (the “City”) owns approximately 8.22 acres of land generally described as located south of Sea Shell Drive, east of Rutherford Drive and north of Sierra Drive in the City of Mesquite, Dallas County, Texas (the “City Tract”), the City Tract being more particularly described in Exhibit “B” of the Agreement For Exchange of Real Property attached hereto as Attachment “1” and made a part hereof for all purposes (the “Exchange Agreement”); and

WHEREAS, the Mesquite Independent School District (“MISD”) owns approximately 8.22 acres of land generally described as located west of the rear property line of Covington Drive, north of Sierra Drive, and south of Sea Shell Drive in the City of Mesquite, Dallas County, Texas (the “MISD Tract”), said the MISD Tract being more particularly described in Exhibit “A” attached to the Exchange Agreement; and

WHEREAS, the MISD Tract and the City Tract are adjacent to each other; and

WHEREAS, both the MISD and the City are governmental entities with the power of eminent domain; and

WHEREAS, the MISD presently operates the school located on the MISD Tract and the City presently utilizes the City Tract as a park; and

WHEREAS, enrollment is increasing in the MISD and the MISD has determined that it is necessary to replace the existing school structure with a new one; and

WHEREAS, in order not to disrupt the MISD’s school instructional program at Rutherford Elementary School, it is necessary for the MISD to construct a new school structure on the adjoining City Tract; and

WHEREAS, upon completion of the new MISD school facilities and prior to delivering the MISD Tract to the City, the MISD, at its sole cost and expense, has agreed to demolish and remove the existing school facilities, including fences, driveways, buildings, structures and utilities on the MISD Tract and to construct park facilities substantially compatible to the park facilities presently existing on the City Tract, including an unlit, full size football practice field with a grass surface, an unlit baseball practice field with a grass and dirt surface, and a lit double play court presently existing on the City Tract; and

WHEREAS, MISD will not alter and will retain the existing parking and the current gymnasium on the City Tract and will remove the corner of the current playground on the City Tract so it can be used as a bus loop; and

WHEREAS, the exchange of the City Tract for the MISD Tract will result in no net loss of City park property; and

WHEREAS, the exchange of the MISD Tract and the City Tract, together with the construction by the MISD of a new school facility on the City Tract, the removal by the MISD of existing school facilities on the MISD Tract and other actions incidental thereto (collectively the "Project") will facilitate the need for a new school facility while minimizing any harm to the City's park property; and

WHEREAS, following a public hearing, notice of which had been properly posted, the City Council makes the findings and decisions more fully set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the City Council of the City of Mesquite, Texas (the "City Council"), hereby adopts and incorporates into this Resolution the recitals (whereas clauses) set forth herein as the legislative findings and intent of the City Council.

SECTION 2. That the City Council hereby finds and determines that: (i) the Project requires the use or taking of the City Tract which is currently being used as a City park; (ii) there is no feasible and prudent alternative to the use or taking of the City Tract; and (iii) the Project includes all reasonable planning to minimize harm to the City Tract as a park resulting from such use or taking.

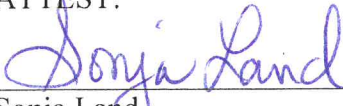
SECTION 3. That the City Council approves the Project and the transfer of the City Tract to the MISD in exchange for the transfer of the MISD Tract to the City.

SECTION 4. That the City Council approves the terms and provisions of the Exchange Agreement attached hereto as Exhibit "1" and authorizes the Mayor to execute the Exchange Agreement and all documents necessary to consummate the transactions contemplated therein including but not limited to, all documents necessary to transfer the City Tract to the MISD in exchange for the transfer of the MISD Tract to the City.

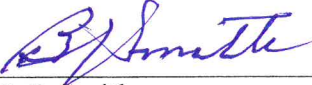
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of March, 2017.



Stan Pickett
Mayor

ATTEST:


Sonja Land
City Secretary

APPROVED:


B. J. Smith
City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

AGREEMENT FOR
EXCHANGE OF REAL PROPERTY

This agreement for the exchange of real property is made by and between Mesquite Independent School District ("MISD") and the City of Mesquite ("City").

Recitals

MISD is an independent school district duly organized and existing under and by virtue of the laws of the State of Texas.

City is a Texas home rule municipality duly organized and existing under and by virtue of the laws of the State of Texas.

MISD owns fee simple title to the real property legally described in Exhibit "A" appended to this agreement.

City owns fee simple title to the real property legally described in Exhibit "B" appended to this agreement.

The tracts of real property described in Exhibits "A" and "B" adjoin and abut each other.

MISD and City desire and intend to make an exchange of the like-kind properties described in Exhibits "A" and "B" appended to this agreement.

Both MISD and City are governmental entities with the power of eminent domain.

Accordingly, for Ten Dollars (\$10.00) and other good and valuable consideration, MISD and City agree as follows:

Agreement, Terms and Conditions

1. MISD agrees to transfer the real property described in Exhibit "A" to City.
2. City agrees to transfer the real property described in Exhibit "B" to MISD.

3. MISD warrants and represents to City that, at time of closing, it will convey good and marketable fee simple title to the real property described in Exhibit "A" to City, free and clear of any encumbrances other than utility easements that will not interfere with City's use of the property as a public park.

4. City warrants and represents to MISD that, at time of closing, it will convey good and marketable fee simple title to the real property described in Exhibit "B" to MISD, free and clear of any encumbrances other than utility easements that will not interfere with MISD's use of the property to construct and operate a public school on the property.

5. The closing under this agreement shall take place within thirty (30) days of the enactment of resolutions of MISD's Board of Trustees and City's City Council approving this transaction. City shall, prior to enactment of resolutions approving this transaction, fully comply with Chapter 26 Texas Parks and Wildlife Code.

6. At closing, MISD shall deliver a deed in substantially the form as that appended to this agreement as Exhibit "C" to City; and, City shall deliver a deed in substantially the form as that appended to this agreement as Exhibit "D" to MISD.

7. MISD presently operates an elementary school on the real property described in Exhibit "A"; and, City presently utilizes the real property described in Exhibit "B" as a park. It is anticipated by the parties that, after closing, MISD will construct a new school structure on the real property described in Exhibit "B". Upon completion of the new school facilities, MISD will demolish the school facilities presently existing on the real property described in Exhibit "A".

MISD and City agree:

- a. Possession of the real property described in Exhibit "B" shall be delivered to MISD upon closing.

- b. Possession of the real property described in Exhibit "A" shall be delivered to City within one hundred eighty (180) days after completion and occupation of the new school facilities to be constructed on the real property described in Exhibit "B" by MISD.
- c. The costs of preparation of the real property described in Exhibit "B" for construction and demolition of any improvements on such tract shall be borne and paid by MISD.
- d. The costs of demolition of the school site presently existing on the real property described in Exhibit "A" shall be borne and paid by MISD.
- e. MISD agrees, prior to delivery of possession of the real property described in Exhibit "A" to City, to demolish and remove, at its sole cost and expense, all fences, driveways, permanent buildings and utilities presently located upon the property and deliver same to City in a neat and presentable condition; and, to restore to smooth surface contours and neat condition all earth disturbed during demolition of such improvements.
- f. Prior to delivery of the real property described in Exhibit "A" to City, MISD shall construct upon such property, at its sole cost and expense, park facilities substantially compatible to the park facilities presently existing on the real property described in Exhibit "B". Specifically, MISD shall construct on the real property described in Exhibit "A" an unlit, full size football practice field with grass surface; an unlit baseball practice field with grass and dirt surface; and, a lit double play court. All parking will remain as same presently exists; and the current gymnasium shall be retained, tied

to City's recreational center. MISD further agrees to construct a walking trail on the property. MISD and City, further agree that a corner of the current playground will be removed to be utilized as a bus loop. MISD further agrees to make all repairs necessary to restore the existing playground to its current condition. In the event that City desires to enhance the park facilities over and above those described in this agreement, City shall deliver to MISD plans and specifications for such enhanced improvements; and, shall reimburse the costs incurred by MISD to construct such enhancements within thirty (30) days from delivery of possession of the property described in Exhibit "A" to City.

g. City grants to MISD a temporary easement on and across the real property described in Exhibit "A" to facilitate MISD's demolition of existing structures and construction of the baseball diamond to be constructed by MISD. The temporary easement shall terminate upon MISD's delivery of possession of the real property described in Exhibit "A" to City.

8. In determining market value of the tracts of real property described in Exhibits "A" and "B", both tracts shall be considered to be raw land.

9. Exhibits "A", "B", "C" and "D" and the Recitals set out above are incorporated in this agreement by reference for all purposes.

10. All closing costs, appraisal fees and survey costs shall be paid by MISD.

11. This agreement contains the complete agreement between the parties and cannot be modified except through the written agreement of the parties.

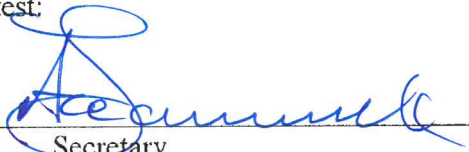
12. The terms of this agreement shall survive closing and shall not merge with any deeds delivered by the parties.

13. This agreement shall be construed and interpreted under and in accordance with the laws of the State of Texas; and, is wholly performable in Dallas County, Texas.

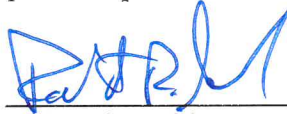
14. Any party to this agreement who is a prevailing party in a legal proceeding against the other party brought under or in relation to this agreement shall be entitled to recover from the other party reasonable attorney's fees and costs of litigation.

Dated: December 12, 2016.

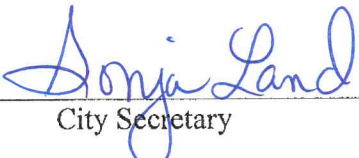
Attest:


Secretary

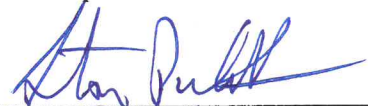
Mesquite Independent School District

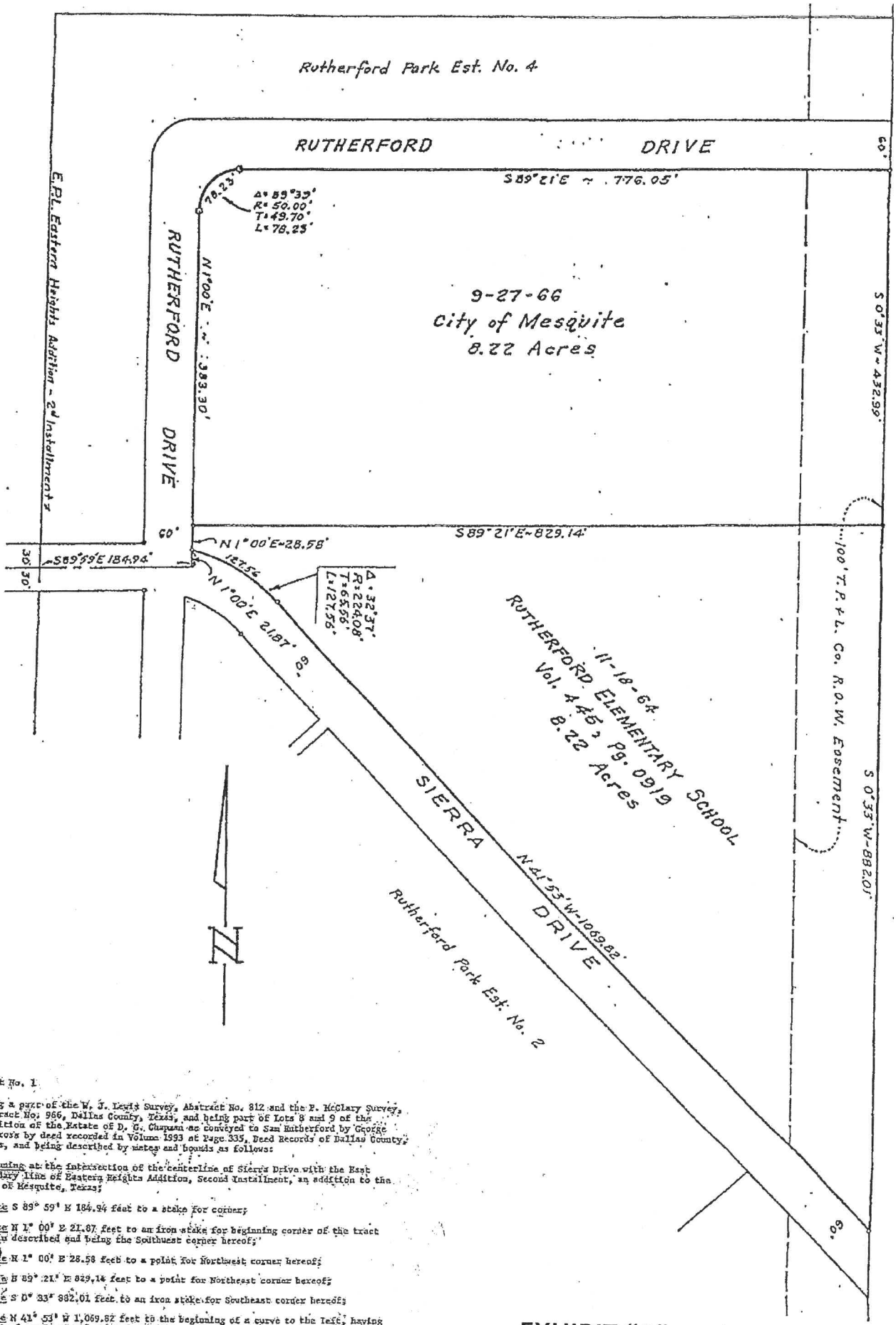
By: 
Board President

Attest:


City Secretary

City of Mesquite

By: 
Stan Pickett, Mayor (Title)



Tract No. 1.

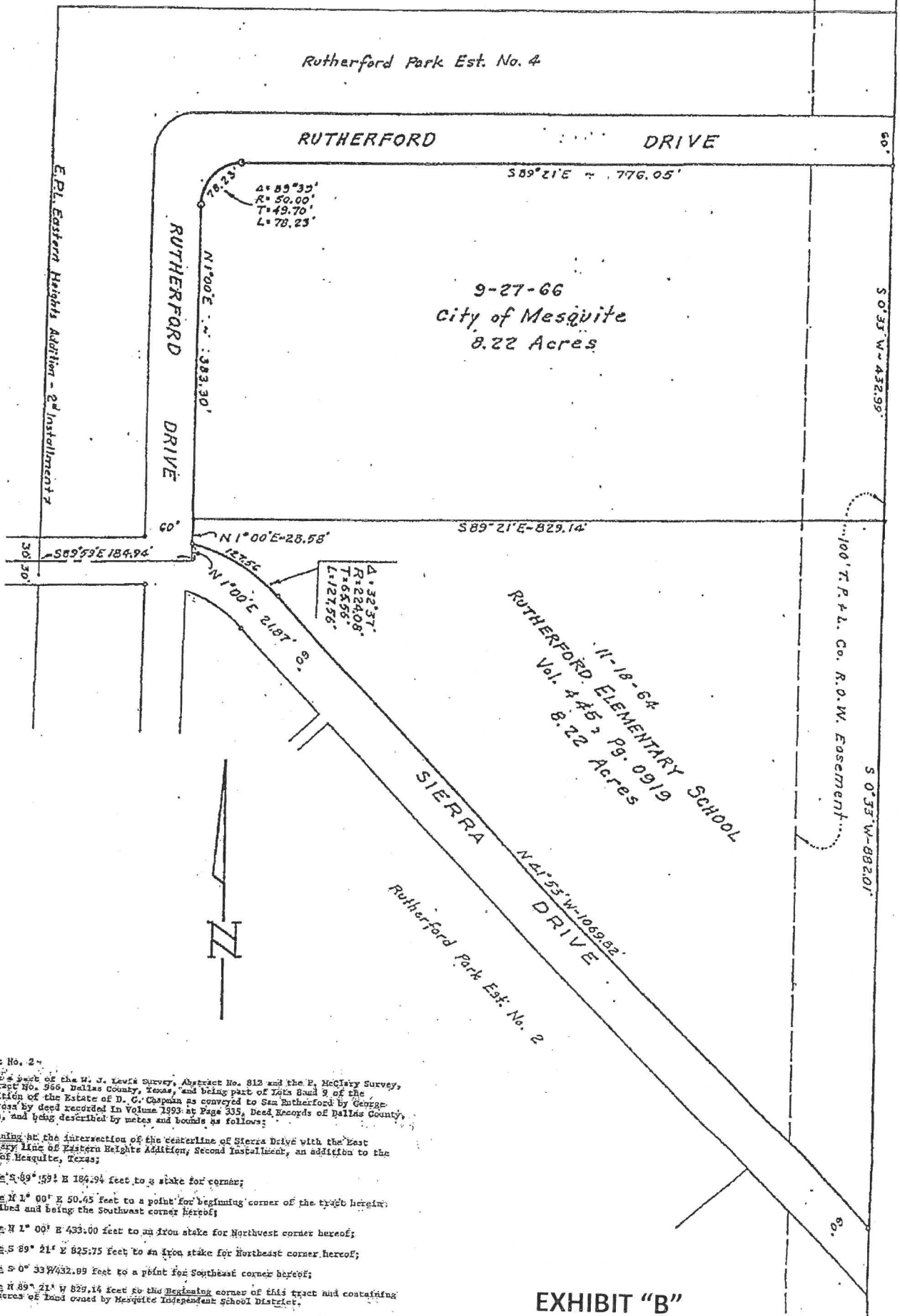
Being a part of the W. J. Lewis Survey, Abstract No. 812 and the E. McClary Survey, Abstract No. 956, Dallas County, Texas, and being part of Lots 8 and 9 of the partition of the Estate of D. G. Chapman conveyed to San Rutherford by George W. Cross by deed recorded in Volume 1993 at Page 335, Deed Records of Dallas County, Texas, and being described by metes and bounds as follows:

Beginning at the intersection of the centerline of Sierra Drive with the East Boundary line of Eastern Heights Addition, Second Installment, an addition to the City of Mesquite, Texas;

- Thence S 89° 59' N 184.94 feet to a stake for corner;
- Thence N 1° 00' E 21.87 feet to an iron stake for beginning corner of the tract herein described and being the Southwest corner hereof;
- Thence N 1° 00' E 28.58 feet to a point for Northwest corner hereof;
- Thence S 89° 21' E 829.14 feet to a point for Northeast corner hereof;
- Thence S 0° 33' W 892.01 feet to an iron stake for Southeast corner hereof;
- Thence N 41° 53' W 1,069.92 feet to the beginning of a curve to the left, having a central angle of 32° 37' and a radius of 224.08 feet;
- Thence along said curve 127.56 feet to the Southeast corner of this tract and containing 8.22 acres of land owned by Mesquite Independent School District.

EXHIBIT "A"

Rutherford Park Est. No. 4



Tract No. 2 -
 being a part of the W. J. Lewis Survey, Abstract No. 812 and the P. McClary Survey, Abstract No. 966, Dallas County, Texas, and being part of Tract 3 of the partition of the Estate of D. G. Chapman as conveyed to San Rutherford by George W. Cross by deed recorded in Volume 1993 at Page 335, Deed Records of Dallas County, Texas, and being described by metes and bounds as follows:

Beginning at the intersection of the centerline of Sierra Drive with the East Boundary Line of Eastern Heights Addition, Second Installment, an addition to the City of Mesquite, Texas;

Thence S 89° 59' E 184.94 feet to a stake for corner;

Thence N 1° 00' E 50.65 feet to a point for beginning corner of the tract herein described and being the Southwest corner hereof;

Thence N 1° 00' E 433.00 feet to an iron stake for Northwest corner hereof;

Thence S 89° 21' E 825.75 feet to an iron stake for Northeast corner hereof;

Thence S 0° 33' W 432.89 feet to a point for Southeast corner hereof;

Thence N 89° 21' W 829.14 feet to the beginning corner of this tract and containing 8.22 acres of land owned by Mesquite Independent School District.

EXHIBIT "B"



201700098133

DEED 1/4

SPECIAL WARRANTY DEED
(Without Title Policy or Title Search)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

Date: January 9, 2017 
~~November __, 2016~~

Grantor:
Grantor's Mailing Address: Mesquite Independent School District
405 E. Davis Street
Mesquite, Texas 75149
(Dallas County)

Grantee:
Grantee's Mailing Address: City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149
(Dallas County)

Consideration: For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged

Property (including any improvements):

The real property and improvements described in Exhibit "A" attached hereto and incorporated herein.

Reservations from and Exceptions to Conveyance and Warranty:

This Deed is executed and delivered subject to all easements, reservations, conditions, covenants and restrictive covenants as the same appear of record in the office of the County Clerk of Dallas County, Texas, or which are apparent on the face of the property.

THIS CONVEYANCE IS MADE AND ACCEPTED "AS IS" WITHOUT WARRANTY FOR FITNESS FOR PURPOSE, MERCHANTABILITY, OR OTHERWISE, EXCEPTING ONLY THE LIMITED WARRANTY OF TITLE HEREIN CONTAINED.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whosoever lawfully claiming or to claim the same or any part thereof.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:

MESQUITE INDEPENDENT
SCHOOL DISTRICT

By: *Robert Sewell*
Board President

[ACKNOWLEDGMENT]

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS INSTRUMENT was acknowledged before me by *Robert Sewell* on this
the *12th* day of *December*, 2016, said person identified to me by
personally known

Linda Samples
Notary Public, State of Texas



AFTER RECORDING
RETURN TO:

Gary Allmon Grimes
Schuereberg & Grimes, P.C.
120 West Main, Suite 201
Mesquite, Texas 75149

GENERAL WARRANTY DEED
(Without Title Policy or Title Search)

EXHIBIT *C - Page 2*
Page 2

THE STATE OF TEXAS
COUNTY OF DALLAS

I hereby certify that the above and foregoing is a full, true, and correct photographic copy of the original record now in my lawful custody and possession, filed on the date stamped thereon and as the same is recorded in the Recorder's Records in my office under the volume and page or instrument # stamped thereon.
I hereby certify on

APR 07 2017




COUNTY CLERK, Dallas County, Texas

By  Deputy



201700098134

DEED 1/4

SPECIAL WARRANTY DEED

(Without Title Policy or Title Search)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

Date: March 6, 2017 *[Signature]*
~~November~~, 2016

Grantor: City of Mesquite
Grantor's Mailing Address: 1515 N. Galloway
Mesquite, Texas 75149
(Dallas County)

Grantee: Mesquite Independent School District
Grantee's Mailing Address: 405 E. Davis Street
Mesquite, Texas 75149
(Dallas County)

Consideration: For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged

Property (including any improvements):
The real property and improvements described in **Exhibit "B"** attached hereto and incorporated herein.

Reservations from and Exceptions to Conveyance and Warranty:
This Deed is executed and delivered subject to all easements, reservations, conditions, covenants and restrictive covenants as the same appear of record in the office of the County Clerk of Dallas County, Texas, or which are apparent on the face of the property.

THIS CONVEYANCE IS MADE AND ACCEPTED "AS IS" WITHOUT WARRANTY FOR FITNESS FOR PURPOSE, MERCHANTABILITY, OR OTHERWISE, EXCEPTING ONLY THE LIMITED WARRANTY OF TITLE HEREIN CONTAINED.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whosoever lawfully claiming or to claim the same or any part thereof.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:

CITY OF MESQUITE

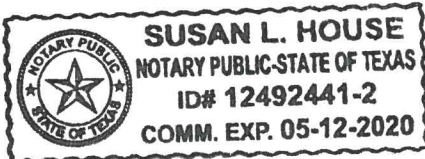
By: Stan Pickett
Its: Mayor

[ACKNOWLEDGMENT]

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

THIS INSTRUMENT was acknowledged before me by Stan Pickett on this
the 9th day of March, 2016, said person identified to me by
known to me

Susan L. House
Notary Public, State of Texas



AFTER RECORDING
RETURN TO:

Gary Allmon Grimes
Schuereberg & Grimes, P.C.
120 West Main, Suite 201
Mesquite, Texas 75149

GENERAL WARRANTY DEED
(Without Title Policy or Title Search)

EXHIBIT D-Page 2
Page 2

THE CITY OF DALLAS, TEXAS
 CITY ENGINEER
 DATE OF EXAMINATION
 DATE OF SURVEY
 DATE OF RECORDING

1. The owner of the land shown in this plat is the City of Dallas, Texas, and the plat is a part of the public record. The plat is subject to the provisions of Chapter 40, Article 10, Section 1 of the Constitution of the State of Texas, and to the provisions of the laws of the State of Texas relating to the recording of public maps and plats. The plat is subject to the provisions of the laws of the State of Texas relating to the recording of public maps and plats.

2. The owner of the land shown in this plat is the City of Dallas, Texas, and the plat is a part of the public record. The plat is subject to the provisions of Chapter 40, Article 10, Section 1 of the Constitution of the State of Texas, and to the provisions of the laws of the State of Texas relating to the recording of public maps and plats. The plat is subject to the provisions of the laws of the State of Texas relating to the recording of public maps and plats.

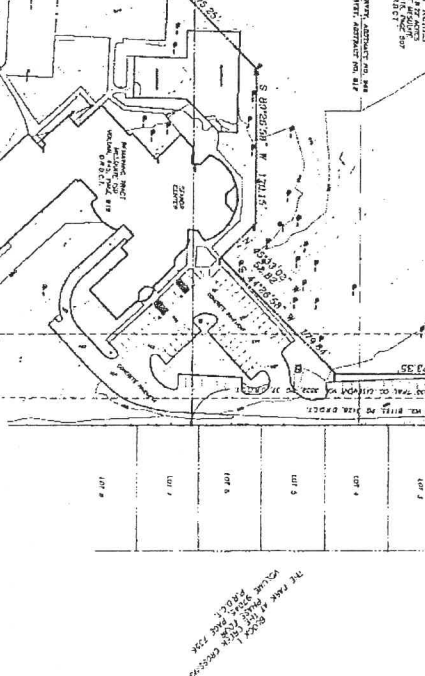
3. The owner of the land shown in this plat is the City of Dallas, Texas, and the plat is a part of the public record. The plat is subject to the provisions of Chapter 40, Article 10, Section 1 of the Constitution of the State of Texas, and to the provisions of the laws of the State of Texas relating to the recording of public maps and plats. The plat is subject to the provisions of the laws of the State of Texas relating to the recording of public maps and plats.



BOUNDARY/TPOGRAPHIC SURVEY
RUTHERFORD ELEMENTARY SCHOOL
WILLIAM J. LEWIS SURVEY
ABSTRACT NO. 812
CITY OF MESQUITE
DALLAS COUNTY, TEXAS

SUBURBAN SURVEYING, INC.
 1700 N. GATEWAY
 DALLAS, TEXAS 75207
 PHONE 817-340-0000

EXHIBIT "B"



THE PLAT OF THE BOUNDARY/TPOGRAPHIC SURVEY OF THE RUTHERFORD DRIVE TRACT, DALLAS COUNTY, TEXAS, AS SHOWN ON THE PLAT OF THE RUTHERFORD DRIVE TRACT, DALLAS COUNTY, TEXAS, ABSTRACT NO. 812, IS HEREBY REFERRED TO AS "THE SURVEY".

LEGAL DESCRIPTION

The tract shown in the plat is a portion of the William J. Lewis Survey, Dallas County, Texas, Abstract No. 812, which is a portion of the larger tract shown on the plat of the William J. Lewis Survey, Dallas County, Texas, Abstract No. 812, which is a portion of the larger tract shown on the plat of the William J. Lewis Survey, Dallas County, Texas, Abstract No. 812.

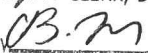
THE STATE OF TEXAS
COUNTY OF DALLAS

I hereby certify that the above and foregoing is a full, true, and correct photographic copy of the original record now in my lawful custody and possession, filed on the date stamped thereon and as the same is recorded in the Recorder's Records in my office under the volume and page or instrument # stamped thereon.
I hereby certify on

APR 07 2017




COUNTY CLERK, Dallas County, Texas

By  Deputy