

RESOLUTION NO. 63-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CONVEYANCE OF PROPERTY TO THE MESQUITE INDEPENDENT SCHOOL DISTRICT (“MISD”) FOR THE CONSTRUCTION OF A NEW SCHOOL ON PROPERTY COMMONLY KNOWN AS 4200 FAITHON P. LUCAS, SR., BOULEVARD; FINDING THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO MISD’S USE OF THE LAND, AND ALL REASONABLE PLANNING HAS BEEN DONE TO MINIMIZE HARM TO THE LAND AS A PARK; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT FOR SALE TO MISD FOR THE PURPOSES HEREIN EXPRESSED.

WHEREAS, the City of Mesquite (the “City”) owns approximately 44 acres of land, generally described as located in the John P. Anderson Survey, Abstract No. 1, Mesquite, Dallas County, Texas, and being a part of the property commonly known as 4200 Faithon P. Lucas, Sr., Boulevard in the City of Mesquite, Dallas County, Texas (the “City Tract”), the City Tract being more particularly described in Exhibit “A” attached to the Contract for Sale of Real Property attached hereto as Exhibit “1” and made a part hereof for all purposes (the “Contract for Sale”); and

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

WHEREAS, the City has never used the undeveloped and vacant City Tract as a park, and, due to logistical limitations, has no plans to do so; and the City owns abundant land in the immediate vicinity of the City Tract dedicated to and available for park use; consequently conveyance of the City Tract to MISD will result in no actual net loss of City park property; and

WHEREAS, because enrollment is increasing, MISD has determined that it is necessary to purchase the City Tract and construct a new school structure on the City Tract (the “Project”), and the necessity is so great as to make the construction of the new school at this location of paramount importance to the public; and

WHEREAS, the location of the Project is preferable on the City Tract and cannot be practically accomplished on other property owned by MISD for the following reasons:

- (a) The only other qualifying site owned by MISD in the chosen area (“the MISD Site”) is adjacent to an industrial zoning district, which makes it less compatible with a school use than the City Tract. The industrial zoning district will allow land uses that may have a detrimental impact on less intense land uses such as school and residential uses. Industrial uses are characterized by a volume of heavy truck traffic which will conflict with school traffic.
- (b) The City Tract, on the other hand, is adjacent to a City park that includes a softball complex.

- (c) The City Tract would also place the future school closer to a future major residential development called Lucas Farms.
- (d) MISD schools are typically located on arterial streets to optimize access and safe traffic circulation for the trip demands of a school. The proposed school will be attended by students from across Mesquite and the Balch Springs area within MISD, increasing vehicular trip counts and the need for good traffic access and circulation. The City Tract abuts Faithon P. Lucas, Sr., Boulevard, which is currently being designed by Dallas County as a four-lane divided arterial street that will also include a 12-foot wide trail. The City Tract's access can be tied to the existing highway system for adequate public and emergency access by bringing Faithon P. Lucas, Sr., Boulevard up to arterial standards. The MISD Site is located on a substandard collector street which does not provide adequate vehicular access without substantial street upgrades and infrastructure improvements.

WHEREAS, a public school use would be compatible and complimentary to the park facilities located in the immediate vicinity of the City Tract; therefore, conveyance of the City Tract to MISD will facilitate the need for a new school facility while minimizing any harm to the City's park property by capitalizing on supportive land usage; 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:

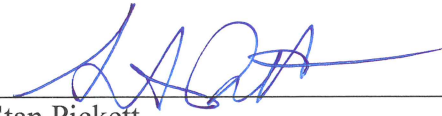
SECTION 1. That the findings set forth in the recitals of this Resolution are found to be true and correct, and are hereby adopted as the findings of the City Council.

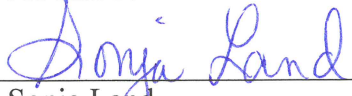
SECTION 2. That the City Council of the City of Mesquite, Texas (the "City Council"), hereby finds and determines that: (i) the Project requires the use or taking of the City Tract; (ii) there is no feasible and prudent alternative to the use or taking of the City Tract; and (iii) the Project includes all reasonable planning to minimize harm to the City Tract resulting from such use or taking.

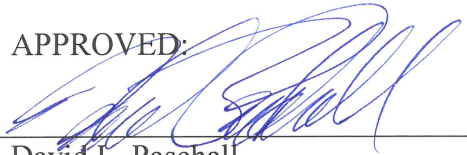
SECTION 3. That the City Council approves the conveyance of the City Tract for fair market value to the MISD for construction of a new school.

SECTION 4. That the City Council approves the terms and provisions of the Contract of Sale attached hereto as Exhibit "1" and authorizes the City Manager to execute the Contract of Sale and all documents necessary to consummate the transactions contemplated therein including all documents necessary to convey the City Tract to the MISD.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 5th day of November 2018.

  
\_\_\_\_\_  
Stan Pickett  
Mayor

ATTEST:  
  
\_\_\_\_\_  
Sonja Land  
City Secretary

APPROVED:  
  
\_\_\_\_\_  
David L. Paschall  
City Attorney

**COMMERCIAL REAL ESTATE CONTRACT  
FOR PURCHASE AND SALE  
(The "Contract")**

APPROVED BY CITY COUNCIL

DATE 11.5.2018AGENDA ITEM NO. 35B

- Check all boxes applicable to this Contract  
[Boxes not checked shall be deemed deleted from this Contract]

For and in consideration of the mutual terms, provisions, covenants and agreements contained herein, each of the parties hereto agree as follows:

**1. PARTIES.** The City of Mesquite, Texas ("Seller") agrees to sell and convey to Mesquite Independent School District ("Purchaser") and Purchaser agrees to buy and pay for the property described below.

**2. PROPERTY.** Situated in Dallas County, Texas, to wit: Being a tract of real property consisting of 44.097 acres of land situated in Mesquite, Dallas County, Texas, in the John P. Anderson Survey, Abstract No. 1 Dallas County, Texas, and being a part of the 121.2223 acre tract conveyed to the City of Mesquite (described as Tract 1) in the Deed Without Warranty recorded in Vol. 94131, Page 00491, Deed Records of Dallas County, Texas, together with, all and singular, all improvements thereon and all rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys, or right-of-way, such real estate, improvements, rights and appurtenances being herein referred to as part of the "Property". The Property is informally described in Exhibit "A" attached to this Contract. Exhibit "A" is incorporated herein for all purposes.

Seller and Purchaser acknowledge that the correct and final legal description of the Property as described above is to be determined by the survey to be provided pursuant to Paragraph 5A of this Contract, and the above legal description technically may be insufficient for the purposes of supporting an action for specific performance or other enforcement hereof. As such, Seller and Purchaser confirm to one another that, notwithstanding any insufficiency, the parties desire to proceed to sell and purchase the Property. Therefore, because the parties are desirous of executing this Contract and to provide for the right of Purchaser to demand and successfully enforce specific performance and to insure such right is not precluded due to the legal description of the Real Property, Seller and Purchaser agree that (i) they are experienced in transactions of the nature provided for in this Agreement, (ii) in fact, they are thoroughly familiar with the location of the Property, and (iii) each party waives any and all claims of an insufficient legal description in a cause of action for performance hereunder.

**3. PURCHASE PRICE.** The Contract purchase price (the "Purchase Price") for the

Property is \$970,134.00 payable as follows: All in cash at closing

**4. EARNEST MONEY.**

A. EARNEST MONEY DEPOSIT. Upon full and final execution of this Contract, Purchaser shall deposit earnest money (the "Earnest Money") in the amount of \$10.00 with Reunion Title of Mesquite, 200 W. Davis Street, Mesquite, Texas 75149: Attention Diane Wright (the "Title Company"), as Escrow Agent, to be held in escrow pursuant to the terms of this Contract. Seller's acceptance of this Contract is expressly conditioned upon Purchaser's deposit of the Earnest Money with the Title Company not later than the close of business on

the fifth business day after the Execution Date of this Contract; and Purchaser's failure to deposit the Earnest Money timely shall be a material breach hereof and, at Seller's option, Seller may, upon notice to Purchaser, terminate this Contract and declare same to be null and void. If this Contract is terminated by Purchaser pursuant to a right of termination granted to Purchaser by any provision of this Contract, or any Addenda attached, the Earnest Money shall be promptly refunded to Purchaser, and the parties shall have no further obligation or liability to each other hereunder. The Earnest Money shall not be placed in an interest-bearing account by the Escrow Agent. Seller and Purchaser may waive the requirement of deposit of earnest money by providing Escrow Agent with written notification of such waiver.

- B. ESCROW AGENT. The Earnest Money is deposited with Escrow Agent with the understanding that Escrow Agent is not (1) a party to this Contract and does not assume or have any liability for the performance or non-performance of any party to this Contract, (2) liable for interest on the funds held unless required herein, and (3) liable for any loss of escrow funds caused by the failure of any banking institution in which such funds have been deposited unless such banking institution is acting as Escrow Agent. The Escrow Agent shall not deposit the Earnest Money in one or more federally insured institutions. If both parties make demand for the payment of the Earnest Money, Escrow Agent has the right to require from all parties and Broker(s) a written release of liability of Escrow Agent which authorizes the disbursement of the Earnest Money. If only one party makes demand for payment of the refundable portion of the Earnest Money, Escrow Agent shall give notice to the other party of such demand. Escrow Agent is authorized and directed to honor such demand unless the other party objects to Escrow Agent in writing within ten (10) days after Escrow Agent's notice to that party. At Closing the refundable portion of the Earnest Money shall be applied to the Purchase Price.

## **5. SURVEY, TITLE COMMITMENT, AND DOCUMENTS.**

A. SURVEY. Within ten days from the date of approval and ratification of this contract by Purchaser's Board of Trustees and Seller's City Council, Seller, at Seller's sole cost and expense, will deliver or cause to be delivered to Purchaser and to the Title Company copies of a current on-the-ground perimeter survey (the "Survey") of the Property prepared by a Registered Professional Land Surveyor in a form acceptable to Purchaser and to the Title Company, and in acceptable form in order to allow the Title Company to delete the survey exception (except as to "shortages in area") from the Title Policy, as defined hereinafter, to be issued by the Title Company. The Survey shall show the location of all improvements, encroachments, protrusions, building lines, fences, streets, rights-of-way, easements and pavements on or adjacent to the Property, with all easements and rights-of-way referenced to their recording information, and all flood prone areas on the property, if any, as defined by the Federal Emergency Management Agency or other governmental authority as being a 100-year flood plain. At Closing, the metes and bounds description of the Property reflected in the Survey shall be used in the warranty deed and any other documents requiring a legal description of the Property.

B. TITLE COMMITMENT. Within ten days from the date of approval and ratification of this contract by Purchaser's Board of Trustees and Seller's City Council, Seller shall obtain, at Seller's sole cost and expense, (1) A title commitment ("Title Commitment") covering the Property binding the Title Company to issue a Texas Owner Policy of Title Insurance (the "Title Policy") on the standard form prescribed by the Texas State Board of Insurance at the Closing, in the full amount of the Purchase Price, insuring Purchaser's fee simple title to the Property to be good and indefeasible, subject only to the "Permitted Exceptions" as defined herein; (2) true and legible copies of all recorded instruments affecting the Property and recited as exceptions in the Title Commitment (the "Title Documents"); and (3) a

current tax certificate. Purchaser will pay the additional premium for deletion of the survey exception on any Owner's Policy of Title Insurance.

C. **ABSTRACT.** At the time of the execution of this Contract, Purchaser acknowledges that all Broker(s) engaged concerning this sale have advised and hereby advise Purchaser, by this writing, that Purchaser should have the abstract covering the Property examined by an attorney of Purchaser's own selection or that Purchaser should be furnished with or obtain a policy of title insurance.

6. **REVIEW PERIOD.** Purchaser shall have ten (10) days after the receipt of the latter of the Survey, Title Commitment and Title Documents, and each updated version thereof and the close of the Inspection Period, to review same and to deliver in writing to Seller such reasonable, good faith objections as Purchaser may have to anything contained in them. Any such item to which Purchaser shall not object shall be deemed a "Permitted Exception." Those items that the Title Company identifies as to be cleared at closing shall be deemed objections by Purchaser as of receipt. Purchaser's failure to object within the time provided shall be a waiver of the right to object. If there are objections by Purchaser, or a third party lender, Seller shall, in good faith, attempt to satisfy such objections prior to Closing, but Seller shall not be required to incur any cost to do so. If Seller delivers written notice to Purchaser on or before the Closing Date that Seller is unable to satisfy such objections, or if, for any reason, Seller is unable to convey title in accordance with paragraph 11.B. herein, Purchaser may either waive such objections and accept such title as Seller is able to convey or Purchaser may terminate this Contract by written notice to Seller whereupon the Earnest Money will be refunded to Purchaser. Zoning ordinances and the lien for current taxes shall be deemed to be Permitted Exceptions.

#### 7. **SELLER'S WARRANTIES AND REPRESENTATIONS.**

Seller represents and warrants to Purchaser to the best of Seller's knowledge as follows:

A. **TITLE.** At the Closing, Seller will have the right and will convey to Purchaser good and indefeasible title to the Property free and clear of any and all liens, assessments, unrecorded easements, security interests and other encumbrances except the Permitted Exceptions. Delivery of the Title Policy pursuant to Paragraph 11.B. shall be deemed to satisfy the obligation of Seller as to the sufficiency of title required hereunder; provided however, Seller shall not thereby be released from the warranties of title by Seller set forth in the warranty deed.

B. **LEASES.** There are no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers.

C. **NEGATIVE COVENANTS.** Seller shall not further encumber the Property or allow an encumbrance upon the title to the Property, or modify the terms or conditions of any existing leases, contracts or encumbrances, if any, without the written consent of Purchaser.

D. **LIENS AND DEBTS.** There are no mechanic's liens or Uniform Commercial Code liens or unrecorded liens against the Property, and Seller shall not allow any such liens to be attached to the Property prior to Closing, which will not be satisfied out of the Closing proceeds. All obligations of Seller arising from the ownership and operation of the Property and business operated thereon, including but not limited to taxes, leasing commissions, salaries, contracts, and similar agreements have been paid or will be paid prior to closing. Except for obligations for which provisions are made herein for proration at Closing and the indebtedness taken subject to or assumed, there will be no obligations of Seller with respect to the Property outstanding as of Closing.

E. LITIGATION. There are no pending, threatened, or contemplated litigation, condemnation, or assessments affecting the Property, except Purchaser's right to acquire the property by eminent domain should it so elect and desire. Seller shall promptly advise Purchaser of any litigation, condemnation or assessments affecting the Property which is instituted or threatened after the date hereof.

F. MATERIAL DEFECTS. Seller has disclosed to Purchaser, to the best of Seller's actual knowledge, any and all known conditions of a material nature with respect to the Property which may affect the health or safety of any tenant or occupant of the Property with such disclosures shown in Addendum D, "Disclosure Notice", attached hereto and made a part hereof. Purchaser acknowledges that neither the Principal Broker nor any cooperating Broker has made any warranty or representation to Purchaser with respect to the condition of the Property. Seller and Purchaser agree to hold the Principal Broker and any Cooperating Broker harmless of and from any and all damages, claims, costs and expenses of every kind and character resulting from or related to Seller's furnishing to said Broker(s) or the Purchaser any false, incorrect or inaccurate information with respect to the Property or Seller concealing any material information with respect to the condition of the Property.

G. HAZARDOUS MATERIALS. Except as otherwise heretofore disclosed in writing by Seller to Purchaser, Seller warrants and represents that, to the best of Seller's actual knowledge, the Property (including any improvements located thereon) does not contain "Hazardous Material", as that term is defined herein. Purchaser acknowledges that current and future federal, state and local laws and regulations may require the clean up of any such Hazardous Material at the expense of those persons who, in the past, present, or future, may have had or continues to have any interest in the Property including, but not limited to, current, past, and future owners and users, including tenants, of the Property. The cost and expense of such clean up may be substantial. Purchaser further acknowledges that the Broker(s) involved in the negotiation of this transaction has no expertise with respect to any such Hazardous Material, although said Broker(s) will disclose any actual knowledge of Hazardous Material on the Property possessed by the said Broker(s). Purchaser acknowledges and agrees that Purchaser shall look solely to experts and professionals selected or approved by Purchaser to advise Purchaser with respect to the condition of the Property and shall not hold the said Broker(s) responsible for any Hazardous Material condition or problem relating to the Property. Each of the Seller and Purchaser hereby agree to indemnify, defend, and hold the Principal Broker and any Cooperating Broker participating in this transaction harmless of and from any and all liability, claim, debt, damage, cost, or expense, including reasonable attorneys' fees, related to or arising out of or in any way connected to Hazardous Material affecting the Property. For purposes of this Contract, the term "Hazardous Material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, as amended, or any other federal, state or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced or subsequently enacted.

H. OPERATION OF PROPERTY. After the Effective Date until the Closing Date, Seller shall (1) operate the Property in the same manner as the Property has been operated; and (2) maintain the Property in the same condition and in the same manner as existed on the Effective Date, ordinary wear and casualty loss excepted.

If any of Seller's warranties or representations above is discovered by Purchaser, prior to Closing, to be misrepresented or inaccurate, Purchaser shall notify Seller promptly in writing, and Seller shall have the opportunity to correct or remedy such misrepresentation or inaccuracy. If such misrepresentation or inaccuracy is not remedied by Seller prior to Closing, Purchaser may, upon written notice to Seller (1) terminate this Contract and the Earnest Money shall be promptly refunded by Title Company to Purchaser and

neither party shall have any further rights or obligations hereunder, or (2) proceed to closing this transaction without waiving any claim for breach of warranty or misrepresentation.

**8. NONCONFORMANCE.** The Purchaser acknowledges that the current use of the Property or the improvements located on the Property (or both) may be nonconforming under applicable municipal or county ordinances and codes. The Property may be in the extra-territorial jurisdiction of one of these governmental bodies. Permitted use, height, setback requirements, minimum parking requirements, coverage of improvements to total area of land and other matters may have a significant economic impact upon the intended use of Purchaser. Purchaser acknowledges that Purchaser has or will independently investigate and verify to Purchaser's satisfaction the extent of any such limitations or uses of the Property. However, if Seller is aware of zoning changes and/or nonconformance, Seller shall be obligated to disclose same to Purchaser. Purchaser further acknowledges that Purchaser is not relying upon any warranties or representations of Seller or the Broker(s) who is participating in the negotiation of this Contract concerning the permitted uses of the Property or with respect to any nonconformance of the improvements located on the Property.

**9. Parties' Status as Governmental Entities with Power of Eminent Domain.** Seller and Purchaser represent and warrant, each to the other, that they are governmental entities with the power of eminent domain under the laws of the State of Texas.

**10. CASUALTY LOSS.** All risk of loss to the Property shall remain upon Seller prior to the Closing. If, prior to the Closing, the Property is damaged or destroyed by fire or other casualty, to a material extent, Purchaser may either terminate this Contract by written notice to Seller or close. If Purchaser elects to close, despite said material damage or destruction, there shall be no reduction in the Purchase Price, and Seller shall assign to Purchaser Seller's right, title and interest in and to all insurance proceeds resulting or to result from said damage or destruction. Unless otherwise provided herein, the term "material" shall mean damage or destruction, the cost of repairing which exceeds ten percent (10%) of the Purchase Price. If, prior to the Closing, the property is damaged or destroyed by fire or other casualty to less than a material extent, Seller shall either repair the same prior to Closing, at Seller's expense, or reimburse Purchaser for the cost of repairing the same by assigning any insurance proceeds resulting therefrom to Purchaser or by allowing Purchaser to deduct such cost from the cash payable to Seller at the Closing. If the extent or damage or the amount of insurance proceeds to be made available is not able to be determined prior to the Closing Date specified below, or the repairs are not able to be completed prior to said date, either party, by written notice to the other, may postpone the date of the Closing to such date as shall be designated in such notice, but not more than thirty (30) days after the Closing Date specified below.

## **11. CLOSING.**

A. **CLOSING DATE.** The closing of the transaction described in this Contract shall be held on or before the expiration of thirty (30) days from the date that this Contract is approved by Seller's City Council and Purchaser's Board of Trustees (the "Closing Date"), at the offices of the Title Company at its address stated below; provided, however, that if on such date the Title Company has not yet approved title or if there are objections made by Purchaser which have not yet been cured by Seller, either party, by written notice to the other, may postpone the date of the Closing to such date as shall be designated in such notice, but not more than thirty (30) days after the Closing Date above specified.

B. **SELLER'S CLOSING DOCUMENTS.** At the Closing, Seller shall deliver to Purchaser at Seller's sole cost and expense: (1) a duly executed Special Warranty Deed conveying the Property in fee simple according to the legal description prepared by the surveyor as shown on the Survey of the Property, subject



only to the Permitted Exceptions; (2) an Owner Policy of Title Insurance issued by the underwriter for the Title Company pursuant to the Title Commitment subject only to the Permitted Exceptions, in the full amount of the Purchase Price, dated as of the date the warranty deed is recorded (Purchaser may, at Purchaser's sole election and expense, pay to have the survey exception deleted); (3) possession of the Property; (4) a duly executed assignment of all leases; (5) evidence of Seller's authority and capacity to close this transaction; (6) written termination agreements concerning all leases required to be cancelled by Purchaser; and (7) all other documents as required by Title Company to close this transaction.

C. PURCHASER'S CLOSING DOCUMENTS. At the Closing, Purchaser shall deliver to Seller (1) the cash portion of the Purchase Price (the Earnest Money being applied thereto), (2) evidence of Purchaser's authority and capacity to close this transaction; and (3) all other documents as required by the Title Company to close this transaction.

D. CLOSING COSTS. Each party hereto shall pay all of the closing costs which are normally assessed by the Title Company against both Seller and Purchaser in a transaction of this character in the county where the Property is located, or as otherwise agreed.

E. PRORATIONS. Ad valorem taxes for the then current year shall be prorated at the Closing effective as of the date of Closing. Any security deposits held by Seller shall be delivered to Purchaser. If the Closing shall occur before the tax rate is fixed for the then current year, the proration of the taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, but any difference in actual and estimated taxes for the year of sale shall be paid by Seller.

F. (Deleted Mortgage Assumption provisions as being non-applicable)

G. WATER CODE NOTICE. If the Property is situated within a utility district or flood control district subject to the provisions of Section 50.301, Texas Water Code, then at or prior to the Closing, Seller agrees to give Purchaser the required written notice and Purchaser agrees to acknowledge receipt of the notice in writing. Said notice shall set forth the tax rate and the bonded indebtedness of the district.

H. ROLLBACK TAXES. If Purchaser's use of the Property after Closing results in the assessment of additional taxes for periods prior to Closing, such additional taxes shall be the obligation of Seller and such obligation shall survive Closing. If a change in use of the Property prior to Closing or denial of a special use valuation on the Property claimed by Seller results in the assessment of additional taxes for periods prior to Closing, such additional taxes shall be the obligation of Seller and such obligation shall survive Closing.

I. FOREIGN PERSON NOTIFICATION. (1) At the Closing, Seller shall deliver to Purchaser and to the Title Company an affidavit(s) from Seller and any other parties required pursuant to Section 1445 of the Internal Revenue Code and/or regulations relating thereto stating, under the penalty of perjury (a) that Seller is not a foreign person, (b) the U.S. Taxpayer identification number of Seller, and (c) such other information as may be required by regulations enacted by the Department of Treasury, in connection with Section 1445 of the Internal Revenue Code. An executed counterpart of such affidavit will be furnished to the Purchaser at Closing. (2) If Seller is a Foreign Person, as defined by applicable law, or if Seller fails to deliver the above described affidavit, the Purchaser or the Title Company shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service, together with appropriate tax forms.

**12. DEFAULT.**

A. PURCHASER'S REMEDIES. If Seller shall fail to consummate the transaction described in this Contract for any reason except Purchaser's default, Seller shall be in default and Purchaser may terminate this Contract and receive the Earnest Money forthwith as Purchaser's sole remedy, thereby releasing Seller from this Contract. Seller's failure to satisfy Purchaser's objections under Paragraph 6 above shall not constitute a default by Seller.

B. SELLER'S REMEDIES. If Purchaser shall fail to consummate this Contract for any reason, except Seller's default or the termination of this Contract pursuant to a right to terminate given herein, Purchaser shall be in default and Seller may have the Earnest Money paid to Seller as liquidated damages for the breach of this Contract, as Seller's sole remedy, thereby releasing Purchaser from this Contract.

**13. PROFESSIONAL SERVICE FEE.**

Seller and Purchaser represent and warrant, each to the other, that they have not engaged the services of any real estate broker, or is any other person, firm, or entity entitled to claim professional fees as a result of the purchase and sale made the subject of this Contract.

**15. ASSIGNMENT.**

NON-ASSIGNABILITY. Purchaser may not assign this Contract.

**16. MISCELLANEOUS PROVISIONS.**

A. EFFECTIVE DATE. The term "Effective Date", as used herein, shall mean the latter of the two dates on which: (1) this Contract is signed by Seller and Purchaser; or, (2) approval and ratification of this Contract by Purchaser's Board of Trustees and Seller's City Council, which latter date shall be the date of final execution and agreement by the parties.

B. NOTICES. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed delivered, whether received or not, on the date of actual receipt if delivered in person, or by messenger with receipt of delivery, or shall be deemed delivered, whether received or not, on the date deposited with the United States Postal Service, registered or certified mail, postage prepaid, return receipt requested, addressed to the intended recipient, at the address set forth on the signature page of this Contract or at such other address as a party hereto may specify by notice in compliance with the requirements of this paragraph. Copies of all written notices required herein shall be delivered to Principal Broker and to the Title Company. All said notices may be made by electronic transmissions such as email.

C. MUTUAL TERMINATION. If this Contract is terminated by agreement of both parties at any time prior to closing, the obligations of each party contained herein shall terminate and Purchaser shall pay to repair any damage to the Property caused by Purchaser or its agents, including any clean up of Hazardous material on the Property deposited by Purchaser or its agents.

D. FORMS. In case of a dispute as to the form of any document required hereunder, the current form prepared by the State Bar of Texas shall be conclusively deemed reasonable.

E. ATTORNEYS' FEES. The prevailing party in any legal proceeding brought under or with relation to this Contract or transaction shall be entitled to recover court costs, reasonable attorneys' fees, and all other litigation expenses from the non-prevailing parties.

F. INTEGRATION. This Contract contains the complete agreement between the parties with respect to the Property and cannot be varied except by written agreement. The parties agree that there are no oral agreements, understanding, representations or warranties signed by the parties which are not expressly set forth herein.

G. SURVIVAL. Any warranty, representation, covenant or condition contained in this Contract not otherwise consummated at the Closing will survive the closing of this transaction.

H. BINDING EFFECT. This Contract shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors and assigns.

I. TIME FOR PERFORMANCE. Time is of the essence of this Contract and each provision hereof. Strict compliance with the times for performance is required.

J. RIGHT OF ENTRY. Purchaser and Purchaser's personnel, consultants, and contractors shall have the right to enter upon the Property prior to Closing for the purposes of conducting surveys and studies of the Property during normal business hours, so long as Purchaser does not unreasonably interfere with Seller's use of the Property or cause damage to the Property.

K. BUSINESS DAY. If any date of performance hereunder falls on a Saturday, Sunday or legal holiday, such date of performance shall be deferred to the next day which is not a Saturday, Sunday or legal holiday.

L. VENUE. This Contract shall be construed under and governed by the laws of the State of Texas, and unless otherwise provided herein, all obligations of the parties created hereunder are performable in the county where the Property is located.

M. SEVERABILITY. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision is severed and deleted from this Contract.

N. DISCLAIMER. By execution of this Contract, the parties acknowledge that (1) the Broker(s) has/have made no representation or recommendation with respect to the legal sufficiency, legal effect or tax ramifications of this Contract or any provision contained herein; and (2) that the Broker(s) has/have advised the parties to consult an attorney, tax advisor or financial advisor before signing this Contract.

O. COUNTERPARTS. This Contract may be executed in a number of identical counterparts. Each such counterpart is deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Contract, it shall not be necessary to produce or account for more than one counterpart.

P. GENDER; NUMBER. Unless the context requires otherwise, all pronouns used in this Contract shall be held and construed to include the other genders, whether used in the masculine, feminine or neuter gender, and words in the singular number shall be held and construed to include the plural, and words in the plural shall be held and construed to include the singular.

Q. MEDIATION. Any and all disputes, controversies, or claims arising out of or relating to this Contract shall be submitted to mediation in accordance with the Commercial Mediation Rules of American Arbitration Association. Disputes, controversies, and claims involving the sale, purchase, financing, physical condition, inspection, or other aspect of the Property shall be proper subjects of mediation. Any agreement executed by the parties pursuant to a mediation conference in accordance with this provision shall be binding and enforceable on the parties hereto. Legal procedures or actions which cannot be resolved through mediation shall be excluded from the terms of this paragraph.

17. **EXHIBITS AND ADDENDA.** The following Exhibits and Addenda are attached hereto, incorporated herein, and made a part hereof for all purposes; *[check all that apply]*

Exhibit "A" Legal description of the Property.

18. **OTHER PROVISIONS.** The closing of this contract is contingent upon and subject to the following terms and conditions:

Seller's and Purchaser's obligations to perform under the terms of this contract are conditioned upon, and, Seller and Purchaser require, the formal, written ratification and approval of this Contract by Mesquite Independent School District's Board of Trustees and Seller's City Council as a necessary condition to binding nature of this Contract and the closing of this contract. In the event that Purchaser's Board of Trustees and City's City Council do not ratify and approve this Contract, this Contract shall be deemed null and void with no further action.

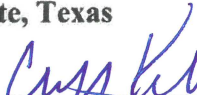
**CONSULT AN ATTORNEY.** *This document is an enforceable, legally binding agreement. READ IT CAREFULLY. The Broker(s) involved in the negotiation of the transaction described in this agreement cannot give you legal advice. By law, the Broker(s) is/are limited to discussing factual and business details of the transaction. Before you sign this document, you should consult an attorney of your choice to review this document on your behalf and to discuss the legal effects of the terms and provisions hereof.*

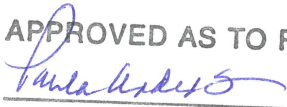
EXECUTED on the dates stated below.

**[Space Intentionally Left Blank]**

**SELLER**

**City of Mesquite, Texas**

By:   
(Printed Name) CLIFF KELLY  
(Title) CITY MANAGER

APPROVED AS TO FORM:  
  
Deputy CITY ATTORNEY

Address: c/o Valerie Bradley  
City Manager's Office  
Mesquite, Texas 75150

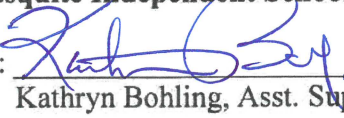
Phone: (972) 329-8329

E-mail: vbradley@cityofmesquite.com

Date: 11-7-18  
(Date of Execution)

**PURCHASER**

**Mesquite Independent School District**

By:   
Kathryn Bohling, Asst. Superintendent

Address: 3819 Towne Crossing Blvd.  
Mesquite, Texas 75150

Phone: 972 882-7409

Fax: 972 882-5591

E-mail: kbohling@mesquiteisd.org

Date: 11-8-18  
(Date of Execution)

Earnest Money received from MISD in the form of  
company check is acknowledged and is accepted subject to the terms and  
conditions herein this 15<sup>th</sup> day of November, 2018.

**ESCROW AGENT:**

Reunion Title of Mesquite  
Address: 200 W. Davis Street  
Mesquite, Texas 75149

By: April Stegman  
Name: April Stegman

Telephone: 972 288-6435

Fax: 972 288-0584

**EXHIBIT "A"**  
**Legal Description**

Being all that certain lot, tract or parcel of land located in the JOHN P. ANDERSON SURVEY, ABSTRACT NO. 1, City of Mesquite, Dallas County, Texas, and being part of a tract of land described in deed to the City of Mesquite, recorded in Volume 94131, Page 491, Deed Records, Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" iron rod with a yellow plastic cap stamped "RPLS 5310" set in the Northwest line of Faithon P. Lucas, Sr. Boulevard, a 120' right-of-way, same being the Southeast line of said Mesquite tract, said point being North 44°30'02" East, a distance of 897.66' from the intersection of said Northwest line, with the Northeast line of McKenzie Road, a 60' right-of-way;

Thence North 45°29'58" West, a distance of 1747.35' to a 1/2" iron rod with a yellow plastic cap stamped "RPLS 5310" set for corner;

Thence North 44°30'02" East, a distance of 1099.99' to a 1/2" iron rod with a yellow plastic cap stamped "RPLS 5310" set for corner;

Thence South 45°29'58" East, a distance of 1742.97' to a 1/2" iron rod with a yellow plastic cap stamped "RPLS 5310" set in the said Northwest line of Faithon P. Lucas, Sr. Boulevard;

Thence South 44°00'56" West, along said Northwest line, a distance of 474.42' to a 1/2" iron rod found for corner;

Thence South 44°26'29" West, continuing along said Northwest line, a distance of 348.10' to a 1/2" iron rod found for corner;

Thence South 44°30'02" West, a distance of 277.49' to the PLACE OF BEGINNING and containing 1,920,884 square feet or 44.097 acres of land.

