

REAL ESTATE CONTRACT - FEE SIMPLE AND PUBLIC UTILITY EASEMENT

THIS CONTRACT OF SALE is made by and between **COLLEGE STATION INDEPENDENT SCHOOL DISTRICT**, a political subdivision, also or formerly known as **A&M CONSOLIDATED INDEPENDENT SCHOOL DISTRICT**, ("SELLER"), and the **CITY OF COLLEGE STATION, TEXAS**, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("BUYER"), upon the terms and conditions set forth herein.

**ARTICLE I
PURCHASE AND SALE**

1.1 SELLER agrees to sell and convey in fee simple and BUYER agrees to purchase and pay for:

TRACT "A" - The fee simple interest in and to all that certain 2,567 square foot tract or parcel of land lying and being situated in the Crawford Burnett League, Abstract No. 7, in College Station, Brazos County, Texas, being a part of Lot 1 Block 1 Athletic Complex according to plat of record in Volume 1140, Page 497 of the Official Records of Brazos County, Texas, said 2,567 square foot parcel of land being more particularly described by Exhibit "A", which is attached hereto and incorporated herein for all intents and purposes.

TRACT "B" - The public utility easement interest in and to all that certain 1,935 square foot tract or parcel of land lying and being situated in the Crawford Burnett League, Abstract No. 7, in College Station, Brazos County, Texas, being a part of Lot 1 Block 1 Athletic Complex according to plat of record in Volume 1140, Page 497 of the Official Records of Brazos County, Texas, said 1,935 square foot parcel of land being more particularly described by Exhibit "B", which is attached hereto and incorporated herein for all intents and purposes.

hereinafter called "PROPERTY", together with all and singular the rights and appurtenances pertaining to the PROPERTY, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way (all of such real property, rights, and appurtenances being herein referred to as the "PROPERTY"), together with SELLER's interest in any improvements and fixtures situated on and attached to the PROPERTY, for the consideration and subject to the terms, provisions, and conditions set forth herein. This Contract by BUYER to purchase the PROPERTY is subject to approval by the City Manager of the City of College Station, Texas; such approval indicated by signature of BUYER's representatives to this CONTRACT OF SALE.

1.2 BUYER has requested **Brazos County Abstract Company** furnish a Commitment for Title Insurance (the "Title Commitment") to insure title to the BUYER for BUYER's review together with legible copies of all instruments referred to in the Title Commitment. The BUYER shall request the title company to furnish these items to BUYER within fifteen (15) calendar days of the date of this Contract. BUYER shall have a period of fifteen (15) business days (the "Title Review Period") after receipt of the Title Commitment and the copies of the instruments referred to in Schedule B as exceptions within which to notify SELLER of BUYER's objection to any item shown on or referenced by those documents (the "Reviewable Matters"). Any Reviewable Matter to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at SELLER's election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or are unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case the earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

1.3 (a) The City of College Station, Texas, at its expense, will provide a survey of the PROPERTY, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey will reflect any encroachments onto or by the PROPERTY onto adjoining properties. BUYER shall have a period of fifteen (15) business days (the "Survey Review Period") after receipt of the Survey within which to notify SELLER of BUYER's objection to any item shown on or referenced on the Survey. Any Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at SELLER's election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or are unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case any earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

(b) The survey drawing shall be addressed to and certified in favor of the BUYER and the Title Company. The field notes description, as prepared by the surveyor, shall be substituted for the description attached to this Contract and shall be used in the Special Warranty Deed and Public Utility Easement.

1.4 BUYER may at its cost order a Level 1 Environmental Site Assessment. BUYER shall have a period of fifteen (15) business days after receipt of the Environmental Site Assessment to review the assessment and notify SELLER of BUYER's rejection of the PROPERTY. BUYER at its option may elect to provide SELLER with an opportunity to cure the environmental problem. If BUYER elects not to provide SELLER with an opportunity to cure or if SELLER fails to cure once BUYER provides that opportunity, this Contract shall be terminated and neither party will have any further liability.

1.5 The sale of the PROPERTY TRACT "A" shall be made by a Special Warranty Deed from SELLER to BUYER in the form prepared by BUYER attached hereto as **Exhibit "C"**.

1.6 The sale of the PROPERTY TRACT "B" shall be made by a Public Utility Easement from SELLER to BUYER in the form prepared by BUYER attached hereto as **Exhibit "D"**.

ARTICLE II PURCHASE PRICE

2.1 The purchase price for said PROPERTY shall be the sum **Six Thousand Nine Hundred Fifty Seven and No/100 Dollars (\$6,957.00)**. The purchase price shall be payable in full at closing.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 SELLER hereby represents and warrant to BUYER as follows:

- (a) SELLER has the full right, power, and authority to enter into and perform their obligations under this Contract.
- (b) SELLER has no actual knowledge of any parties in possession of any portion of the PROPERTY, either as lessees, tenants at sufferance, trespassers, or other persons in possession. Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon the PROPERTY, or any significant adverse fact or condition relating to the PROPERTY, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated use of the PROPERTY.

- (c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting the PROPERTY or any part thereof. SELLER has no actual knowledge of any such proceedings or assessments contemplated by any governmental entity.
- (d) SELLER has no actual knowledge that the PROPERTY does not have full and free access to and from public highways, streets, or roads. SELLER has no actual knowledge that there are pending or threatened governmental proceedings that would impair or result in the termination of such access. If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.
- (e) The PROPERTY has not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.
- (f) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PROPERTY or any part thereof.
- (g) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.
- (h) SELLER has no knowledge that the PROPERTY contains any environmental hazard not shown on the environmental assessment provided by SELLER to BUYER.
- (i) SELLER is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).
- (j) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY, or the business operated thereon, if any, which could give rise to any mechanic's or materialmen's or other statutory lien against the PROPERTY, or any part thereof, or for which BUYER will be responsible.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

4.1 BUYER represents and warrants to SELLER as of the effective date and as of the closing date that:

- (a) BUYER has the full right, power, and authority to purchase the PROPERTY from SELLER as provided in this Contract and to carry out BUYER's obligations under this Contract, and all requisite action necessary to authorize BUYER to enter into this Contract and to carry out BUYER's obligations hereunder has been obtained or on or before closing will have been taken.

ARTICLE V
CLOSING

5.1 The closing shall be held at **Brazos County Abstract Company**, within **Forty Five (45)** calendar days from the execution and tender of this Contract by BUYER, at such time and date as SELLER and BUYER may agree upon (the "closing date").

5.2 At the closing, SELLER shall:

- (a) Deliver to BUYER the duly executed and acknowledged **Special Warranty Deed and Public Utility Easement** prepared by BUYER conveying good and marketable title in the PROPERTY, free and clear of any and all liens, encumbrances, except for the Reviewable Matters and subject to the BUYER's election to terminate this Contract in the event BUYER disapproves of any Reviewable Matter, which objection is to be cured by SELLER on or prior to the closing as provided by Article I of this Contract.
- (b) Deliver possession of the PROPERTY to BUYER.
- (c) Deliver to BUYER, at BUYER's expense, a Title Policy insuring indefeasible title issued by **Brazos County Abstract Company**, in BUYER's favor in the full amount of the purchase price, insuring BUYER's fee simple interest in the PROPERTY TRACT "A" and the public utility easement interest in PROPERTY TRACT "B", subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.
- (d) Pay the SELLER's expenses and attorney fees.

5.3 Upon such performance by SELLER at closing, BUYER shall:

- (a) Pay the balance of the purchase price.
- (b) Prepare, at its cost, the Special Warranty Deed and Public Utility Easement
- (c) Pay the BUYER's expenses or attorney fees.
- (d) Pay the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.
- (e) Pay the costs of work required by BUYER to have the survey reflect matters other than those required under this contract.
- (f) Pay the escrow fees.
- (g) Pay the title insurance.
- (i) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense.

ARTICLE VI BREACH BY SELLER

6.1 In the event SELLER fails to fully and timely perform any of their obligations under this Contract or fail to consummate the sale of the PROPERTY for any reason except BUYER's default, BUYER may:

- (a) Enforce specific performance of this agreement;
- (b) Bring suit for damages against SELLER; and/or
- (c) Terminate this contract and initiate condemnation proceedings.

ARTICLE VII BREACH BY BUYER

7.1 In the event BUYER fails to consummate the purchase of the PROPERTY (BUYER being in default and SELLER not being in default hereunder), SELLER shall have the right to bring suit against BUYER only for expectancy and incidental damages, if any.

ARTICLE VIII MISCELLANEOUS

8.1 **Survival of Covenants:** Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

8.2 Notice: Any notice required or permitted to be delivered by this Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to SELLER or BUYER, as the case may be, at the addresses set forth below:

SELLER: **COLLEGE STATION INDEPENDENT SCHOOL DISTRICT**
ATTN: Tim Jones, President of the Board of Trustees of
College Station Independent School District
1812 Welsh Avenue
College Station, Texas 77840

SELLER'S ATTORNEY **Michael H. Gentry, Attorney at Law**
1515 Emerald Plaza
College Station, Texas 77845
Telephone: 979/694-7000

BUYER: City of College Station
Legal Department
1101 Texas Avenue
College Station, Texas 77840

8.3 Texas Law to Apply: This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Contract are to be performed in Brazos County, Texas.

8.4 Parties Bound: This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

8.5 Invalid Provision: In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

8.6 Construction: The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

8.7 Prior Agreements Superseded: This Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought.

8.8 Time of Essence: Time is of the essence to this Contract.

8.9 Gender: Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

8.10 Multiple Counterparts: This Contract may be executed in a number of identical counterparts. If so executed, each of the counterparts shall, collectively, constitute but one agreement. In making proof of this Contract it shall not be necessary to produce or account for more than one counterpart.

8.11 Memorandum of Contract: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

8.12 Valuation Based on Appraisal: The purchase price for said Property, as previously referenced in paragraph 2.1 of this Contract, shall be based on the fair market value as determined by an independent appraisal. The independent appraisal report was prepared by Jo Ann M. Sette, MAI, of J. Mikeska & Company of Hempstead, Texas on August 24, 2007 for the College Station Independent School District. The Property was determined to have a fair market value of Six Thousand Nine Hundred Fifty Seven Dollars (\$6,957.00), which is equivalent to the purchase price.

8.13 Contingency for Approval of the Texas Education Agency: This Contract is contingent on the Submission and Approval of the Special Warranty Deed by the Texas Education Agency. The Contract may not be finalized until the Texas Education Agency approves the Special Warranty Deed.

EXECUTED on this the _____ day of _____, 2007.

SELLER:
COLLEGE STATION INDEPENDENT SCHOOL DISTRICT, a political subdivision, also or formerly known as A&M CONSOLIDATED INDEPENDENT SCHOOL DISTRICT

BUYER:
CITY OF COLLEGE STATION

BY: _____
Name: _____
Title: _____
Date: _____

BY _____
Name: **TIM JONES**
Title: **PRESIDENT OF THE BOARD OF TRUSTEES OF COLLEGE STATION INDEPENDENT SCHOOL DISTRICT**
Date: _____

APPROVED:

Chief Financial Officer
Date: _____

City Attorney
Date: _____

THE STATE OF TEXAS§

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ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged before me on the ____ day of _____, 200__, by _____, as _____ of the CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation, on behalf of said municipality.

NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS§

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ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged before me on the ____ day of _____, 2007, by **TIM JONES as President of the Board of Trustees of COLLEGE STATION INDEPENDENT SCHOOL DISTRICT, a political subdivision, also or formerly known as A&M CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, on behalf of said political subdivision.**

NOTARY PUBLIC in and for the State of Texas