

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE EXCHANGE OF PROPERTY BETWEEN THE COUNTY OF DALLAS, TEXAS (“DALLAS COUNTY”), AND THE CITY OF MESQUITE, TEXAS (“MESQUITE”), ON DALLAS COUNTY LAND AND IMPROVEMENTS LOCATED AT 823 NORTH GALLOWAY AVENUE, MESQUITE, DALLAS COUNTY, TEXAS, AND MESQUITE UNIMPROVED LAND LOCATED AT 410 SOUTH GALLOWAY AVENUE AND 500 SOUTH GALLOWAY AVENUE, MESQUITE, DALLAS COUNTY, TEXAS; AND AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE PURCHASE AND SALE AGREEMENT WITH DALLAS COUNTY AND ALL DOCUMENTS NECESSARY TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED IN THE AGREEMENT AND ADMINISTER THE AGREEMENT.

WHEREAS, the City of Mesquite, Texas (the “**City**”), owns two unimproved properties: (i) Property 1 is approximately 1.400 acres and located at 410 South Galloway Avenue, Mesquite, Dallas County, Texas; and (ii) Property 2 is approximately 3.840 acres and located at 500 South Galloway Avenue, Mesquite, Dallas County, Texas (collectively, the “**Mesquite Property**”), and the Mesquite Property is more particularly described in Exhibit A attached to the Purchase and Sale Agreement attached hereto as Exhibit 1 and made a part hereof for all purposes (the “**Purchase and Sale Agreement**”); and

WHEREAS, the County of Dallas, Texas (“**Dallas County**”), owns the land and two separate office buildings situated on approximately 2.001 acres located at 823 North Galloway Avenue, Mesquite, Dallas County, Texas (“**Dallas County Property**”), which is more fully described in Exhibit A attached to the Purchase and Sale Agreement; and

WHEREAS, Dallas County and the City desire to exchange the Mesquite Property and Dallas County Property; and

WHEREAS, appraisals for the Mesquite Property and Dallas County Property show the exchange of the properties will result in Dallas County and the City receiving fair market value for the exchange of their respective properties; and

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

WHEREAS, Dallas County and the City desire to enter into the Purchase and Sale Agreement to facilitate the exchange of the properties.

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

SECTION 1. That all of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Mesquite, Texas (the “**City Council**”), and they are hereby approved and incorporated into the body of this resolution as if copied in their entirety.

SECTION 2. That, after reviewing the Purchase and Sale Agreement and information provided by staff, the City Council hereby finds and determines that the exchange of properties as provided in the Purchase and Sale Agreement are in the interest of the City and its citizens.

SECTION 3. That the City Council hereby approves the terms and provisions of the Purchase and Sale Agreement substantially in the form attached hereto as Exhibit 1 and authorizes the City Manager to finalize and execute the Purchase and Sale Agreement and all documents necessary to consummate the transactions contemplated therein including, without limitation, all documents necessary to transfer the Mesquite Property to Dallas County in exchange for the transfer of the Dallas County Property to the City, and to administer the Purchase and Sale Agreement for and on behalf of the City.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of December 2021.

---

Daniel Alemán, Jr.  
Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

---

Sonja Land  
City Secretary



---

David L. Paschall  
City Attorney

# EXHIBIT 1

STATE OF TEXAS  
COUNTY OF DALLAS

§  
§

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (hereinafter defined) by and between the **County of Dallas, Texas** (the “Seller”) duly acting by and through its Commissioners’ Court and **City of Mesquite** and/or assigns (the “Purchaser”) (hereinafter the Seller and Purchaser are from time to time referred to individually as “Party” and collectively as “Parties”)

For and in consideration of the mutual terms, provisions, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Seller and Purchaser agree as follows:

1. PURCHASE AND SALE. Upon and subject to the terms of this Agreement, the Seller agrees to sell, transfer, and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller all of the following described property (the “Property”):
  - A. An approximate 87,164 **sq. ft.** with two separate office buildings situated on approximately 2.001 **acres** located at 823 N Galloway Avenue, Mesquite, **Dallas County, Texas**, as more fully described in Exhibit “A” attached hereto and incorporated herein for all purposes, together with all and singular the rights and appurtenances pertaining thereto including any right, title and interest of Seller in and to adjacent roads, alleys or rights of way, strips or gores of land adjoining the land and abutting properties and rights of ingress or egress (collectively, the “Real Property”);
  - B. the buildings, structures, fixtures, and other improvements on the Real Property (collectively, the “Improvements”);
  - C. all equipment, fixtures, machinery, building materials, and other personal property situated on or attached to the Real Property and owned by Seller and used in connection with the operation, management, and maintenance of the Real Property and the Improvements, including without limitation, all keys, licenses, permits, books, records, plans, and specifications, architectural and engineering drawings, trademarks, contract rights, licenses, permits, consents, and other intangible property pertaining to the Real Property and Improvements described on Exhibit “B” attached hereto and incorporated herein for all purposes (collectively, the “Personal Property”); and
  - D. all of Seller’s right, title, and interest in and to (i) all intangible contracts and agreements (if any) (collectively, the “Operating Agreements”), relating to the upkeep, repair, maintenance, or operation of the Real Property, Improvements, or Personal Property which will extend beyond the Closing Date (as defined below), including specifically, without limitation, all assignable equipment leases and (ii) all assignable existing warranties and guarantees (express or implied) issued to Seller in connection with the Improvements or

the Personal Property (collectively, the “Intangibles”).

2. EFFECTIVE DATE. When used in this Agreement, the term "Effective Date", shall mean the date that this Agreement has been fully executed by the Seller and Purchaser, as indicated by their respective signatures below.
3. PURCHASE EQUITY. The consideration (the “Purchase Equity”) for the sale and conveyance of the Property shall be:
  - A. two unimproved properties, Property 1 being approximately 1.400 acres located at the northeast corner of S Galloway Avenue and E Holley Street and the northwest corner of S Bryan Belt Line Road and E Holley Street, and which is located at 410 S Galloway Avenue, Mesquite, Dallas County Texas; Property 2 being approximately 3.840 acres located at the southeast corner of S Galloway Avenue and E. Holley Street and the southwest corner of S Bryan Belt Line Road and E Holley Street, and which is located at 500 S Galloway Avenue, Mesquite, Dallas County, Texas (collectively, the “Purchase Equity Property”), as more fully described in **Exhibit “A”**. The Purchase Equity represents the full equity payment for the Property.
4. AS IS, WHERE IS.

Based on Purchaser’s review and approval of the Purchaser’s inspections and studies of the Property, and such other inspections, reports, and studies undertaken by Purchaser, except for the express representations of Seller set forth in this Agreement, Purchaser has agreed to acquire the Property in its **AS IS WHERE IS CONDITION, WITH ALL FAULTS**.

Additionally, based on Seller’s review and approval of the Seller’s inspections and studies of the Purchase Equity, and such other inspections, reports, and studies undertaken by Seller, except for the express representations of Purchaser set forth in this Agreement, Seller has agreed to acquire the Purchase Equity in its **AS IS WHERE IS CONDITION, WITH ALL FAULTS**.

5. SELLER’S REPRESENTATIONS, WARRANTIES, AND COVENANTS. Seller represents and warrants as of the date of this Agreement and as of the Closing Date that:

- (a) Seller has good and indefeasible fee simple title to the Property, and Seller shall at the Closing hereunder convey to Purchaser by Special Warranty Deed, good and indefeasible fee simple title to the Property.
- (b) Seller has, without notice to or consent or joinder of any other person or entity, the full right, power and authority to enter into and perform this Agreement, including full right, power and authority to sell and convey the Property to Purchaser. This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms.
- (c) There are no adverse or other parties in possession of the Property, and no person or entity has been granted any license, lease or other right relating to the use, management or possession of the Property or any part thereof.

- (d) Seller has not received or given any written notice of any pending condemnation or similar proceeding affecting the Property.
- (e) Except for debts, liabilities, and obligations for which provisions are made in this Agreement for proration or other adjustments at the Closing, as of the Closing, all debts, liabilities, and obligations of Seller arising from the ownership and operation of the Property will have been paid.
- (f) During the pendency of this Agreement, Seller will not enter into any contract or instrument that will affect title to the Property or create an obligation affecting Purchaser or the Property subsequent to the Closing; (The warranties, representations and covenants contained in this Agreement shall survive the Closing and shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.)
- (g) Each of said warranties and representations is true and correct as of the date hereof and shall be true and correct as of the date of Closing.

Seller's representations and warranties set forth in this Section will survive the Closing for a period of one (1) year. As a condition precedent to Purchaser's obligation to close the purchase and sale transaction contemplated in this Agreement, Seller's representations and warranties contained herein must be and remain true and correct as of the date hereof and as of the Closing Date. If Seller's representations and warranties contained herein are not true as of the Closing Date, Purchaser may elect to terminate this Agreement. Prior to the Closing Date, Seller shall notify Purchaser in writing of any fact, conditions or circumstances which render any of the representations and warranties set forth in this Section in any material way inaccurate, incomplete, incorrect or misleading.

6. PURCHASER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.  
Purchaser hereby represents and warrants as of the date hereof and as of the Closing Date that:

- (a) Purchaser has good and indefeasible fee simple title to the Purchase Equity, and Purchaser shall at the Closing hereunder convey to Seller by Special Warranty Deed, good and indefeasible fee simple title to the Purchase Equity.
- (b) Purchaser has, without notice to or consent or joinder of any other person or entity, the full right, power and authority to enter into and perform this Agreement, including full right, power and authority to sell and convey the Purchase Equity to Seller. This Agreement constitutes the legal, valid and binding obligation of Purchaser enforceable in accordance with its terms.
- (c) There are no adverse or other parties in possession of the Purchase Equity, and no person or entity has been granted any license, lease or other right relating to the use, management or possession of the Purchase Equity or any part thereof.
- (d) Purchaser has not received or given any written notice of any pending condemnation or similar proceeding affecting the Purchase Equity.
- (e) Except for debts, liabilities, and obligations for which provisions are made

in this Agreement for proration or other adjustments at the Closing, as of the Closing, all debts, liabilities, and obligations of Purchaser arising from the ownership and operation of the Purchase Equity will have been paid.

- (f) During the pendency of this Agreement, Purchaser will not enter into any contract or instrument that will affect title to the Purchase Equity or create an obligation affecting Seller or the Purchase Equity subsequent to the Closing; (The warranties, representations and covenants contained in this Agreement shall survive the Closing and shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.)
- (g) Each of said warranties and representations is true and correct as of the date hereof and shall be true and correct as of the date of Closing.

Purchaser's representations and warranties set forth in this section will survive the Closing for a period of one (1) year. As a condition precedent to Seller's obligation to close the purchase and sale transaction contemplated in this Agreement, Purchaser's representations and warranties contained herein must be and remain true and correct as of the date hereof and as of the Closing Date. If Purchaser's representations and warranties contained herein are not true as of the Closing Date, Seller may elect to terminate this Agreement. Prior to the Closing Date, Purchaser shall notify Seller in writing of any facts, conditions or circumstances which render any of the representations and warranties set forth in this section in any material way inaccurate, incomplete, incorrect, or misleading.

## 7. CLOSING.

- A. The closing of the sale (the "Closing Date") will take place at any location and at any time agreed to between the parties after the execution of this Agreement, but shall occur no later than December 31, 2021.
- B. **Seller's Closing Obligations and Documents.** At the Closing, Seller shall, at Seller's sole cost and expense, deliver, or cause to be delivered:
  - (1) A duly executed special warranty deed in recordable form conveying to Purchaser good and indefeasible fee simple title to the Property.
  - (2) A duly executed bill of sale conveying to Purchaser the Personal Property described in **Exhibit "B"** attached hereto and incorporated by reference for all intent and purposes free and clear of liens, security interests, and encumbrances.
  - (3) A duly executed assignment of all leases, if there are any leases affecting the Property.
  - (4) Evidence of Seller's authority and capacity to close this transaction.
  - (5) Any assignments to Purchaser of Seller's entire interest in any service contracts,

certificates, permits and other documents to be delivered to Purchaser at Closing that are then in effect, assignable by Seller and being assumed by Purchaser.

- (6) Any and all other documents reasonably required to close this transaction.
- (7) Seller shall deliver possession of the Property to Purchaser upon closing of this sale.

**C. Purchaser's Closing Obligations and Documents.** At the Closing, Purchaser shall, at Purchaser's sole cost and expense, deliver, or cause to be delivered:

- (1) A duly executed special warranty deed in recordable form conveying to Purchaser good and indefeasible fee simple title to the Purchase Equity.
- (2) A duly executed assignment of all leases, if there are any leases affecting the Purchase Equity.
- (3) Evidence of Purchaser's authority and capacity to close this transaction.
- (4) Any and all other documents reasonably required to close this transaction.
- (5) Purchaser shall deliver possession of the Purchase Equity to Seller upon closing of this sale.
- (6) **Seller Leaseback.** Upon closing Purchaser agrees to lease and Seller agrees to leaseback the Property rent free until June 30, 2024. However, during the leaseback period Seller agrees to maintain the Property in good repair in the same condition as the Property existed as of the date of Purchaser's inspection of the property and to pay all operating expenses associated with the property, including but not limited to taxes, insurance, maintenance, utilities, etc. and will be responsible for all landscape maintenance and HVAC maintenance and repair. In the event Seller has not vacated the property by June 30, 2024, Seller shall be permitted to remain on a month-to-month basis upon the same terms and conditions, and consideration of \$5,000.00 per month, provided that Seller agrees to vacate the premises upon thirty (30) days written notice. During the term of any leaseback of the Property, Seller agrees to have Purchaser named as an additional insured on all casualty insurance; and, further agrees that in the event of casualty loss all insurance proceeds shall be paid to Purchaser.

**D. Taxes.** The Parties agree that neither rollback taxes nor proration of taxes are applicable to this transaction. Purchaser agrees and acknowledges that Seller, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Texas Tax Code, § 151.309, and shall therefore not be liable or responsible to the Purchaser for the payment of such taxes under this Agreement from and after the Closing Date. Additionally, Seller agrees and acknowledges that Purchaser, as a

municipal entity of the State of Texas, is exempted from the payment of Texas state and local sales, excise and use taxes pursuant to Texas Tax Code, § 151.309, and shall therefore not be liable or responsible to the Seller for the payment of such taxes under this Agreement from and after the Closing Date.

8. CLOSING COSTS AND CREDITS, AND PRORATIONS.

The parties agree that all costs (other than costs specifically provided for in this Agreement to be paid for by either Purchaser or Seller, as applicable) that are related to the transaction, negotiation, sale, transfer and conveyance contemplated by this Agreement shall be paid, or caused to be paid, by the party incurring the same.

9. DEFAULT.

A. PURCHASER'S REMEDIES. If Seller fails to close this Agreement for any reason except Purchaser's default or the termination of this Agreement pursuant to a right to terminate set forth in this Agreement, Seller will be in default and Purchaser may elect to: 1) enforce specific performance of this Agreement; or 2) terminate this Agreement by delivering a written notice to Seller, in which event this Agreement shall terminate and be of no further force and effect whatsoever as to the Parties, and the Parties shall have no further obligations to one another with respect to the Property, and the transaction contemplated by this Agreement, other than those obligations that expressly survive termination. If Purchaser elects to terminate this Agreement due to Seller's default, Purchaser shall be deemed to have waived any other remedies available to Purchaser in law or in equity. The foregoing remedy constitutes Purchaser's sole remedy for Seller's default.

B. SELLER'S REMEDIES. If Purchaser fails to close this Agreement for reasons except Seller's default or the termination of this Agreement pursuant to a right to terminate set forth herein, then Purchaser will be in default and Seller, as its sole and exclusive remedy, may terminate this Agreement by delivering written notice to Purchaser, in which event this Agreement shall terminate and be of no further force and effect whatsoever as to the Parties, and the Parties shall have no further obligations to one another with respect to the Property, and the transaction contemplated by this Agreement other than those obligations that expressly survive termination.

10. BROKERS AND AGENCY RELATIONSHIPS. The Parties acknowledge and represent to the other that there are no brokers entitled to a commission in connection with the sale and purchase of their respective Property and, to the extent allowed by law, will protect, defend, indemnify and hold the other Party harmless from and against any and all loss, liabilities and expenses for commissions allegedly arising from the sale and purchase of that Party's Property. This Section 10 shall survive closing.

11. ASSIGNS. This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives, successors, and permitted assigns. Purchaser may assign its rights under this Agreement with written notice to Seller at least three (3) business days

before Closing but without the consent of Seller. Purchaser shall deliver a copy of the agreement pursuant to which this Agreement is assigned to and assumed by such assignee at least one (1) business day prior to Closing and to be effective such agreement must include the assumption by the assignee of the obligations of the Purchaser as set forth herein. An assignment or transfer of this Agreement shall not relieve the original Purchaser named herein of any of Purchaser's obligations under this Agreement (whether the same accrued prior to the date of such assignment or accrues on or after such date). The preceding sentence shall survive Closing.

**12. NO INDEMNIFICATION. NO INDEMNIFICATION BY SELLER OR PURCHASER. THE PARTIES ACKNOWLEDGE AND AGREE THAT NEITHER PARTY HAS THE ABILITY UNDER ARTICLE XI, SECTION 7 OF THE TEXAS CONSTITUTION TO INDEMNIFY THE OTHER OR ANY OTHER THIRD PARTY FOR DAMAGES ARISING UNDER THIS TRANSACTION, NEGOTIATION, AND AGREEMENT.**

13. DISCLAIMER OF WARRANTIES.

WITH RESPECT TO THE PROPERTY BEING CONVEYED BY A PARTY, THE PARTIES HEREBY SPECIFICALLY DISCLAIM ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE OF AS TO OR CONCERNING (A) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL AND ECOLOGY, THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH A PARTY MAY ELECT TO CONDUCT, AND THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS (INCLUDING BUT NOT LIMITED TO THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS; (B) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION LIEN ENCUMBRANCE, LICENSE RESERVATION CONDITION OR OTHERWISE; AND (C) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL ENTITY OR BODY. THE PARTIES ACKNOWLEDGE THAT IT WILL INSPECT THE PROPERTY IT IS ACQUIRING AND WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF THE OTHER PARTY. THE PARTIES FURTHER ACKNOWLEDGE THAT THE INFORMATION PROVIDED AND TO BE PROVIDED WITH RESPECT TO THE PROPERTY IT IS ACQUIRING WAS OBTAINED FROM A VARIETY OF SOURCES AND THE CONVEYING PARTY (1) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION; AND (2) DOES NOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SALE OF THE PROPERTY IS MADE ON AN "AS-IS" BASIS. "WHERE-IS" BASIS, "WITH ALL FAULTS" BASIS, INCLUDING, WITHOUT LIMITATION, ANY CONDITIONS RELATING TO THE ENVIRONMENT, SAFETY, OR PUBLIC HEALTH, AND THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THE CONVEYING PARTY MAKES NO WARRANTY OR EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR

CONDITION OF TITLE (OTHER THAN THE SPECIAL WARRANTY OF TITLE WITH RESPECT TO THE LAND AND THE IMPROVEMENTS, IF ANY), HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. ALL MANUFACTURER WARRANTIES ON EQUIPMENT AND CONSUMER PRODUCTS INCORPORATED INTO THE IMPROVEMENTS SUCH AS AIR CONDITIONERS, HEATING UNITS, WATER HEATERS, REFRIGERATORS, WASHERS, DRYERS AND OTHER APPLIANCES OR EQUIPMENT SHALL BE ASSIGNED TO THE PURCHASER.

14. RELEASE AND WAIVER OF CLAIMS.

EACH PARTY AGREES THAT THE OTHER PARTY SHALL NOT BE RESPONSIBLE OR LIABLE TO THE OTHER PARTY FOR ANY CONSTRUCTION DEFECT, ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITIONS AFFECTING THE PROPERTY BEING ACQUIRED, AS EACH PARTY IS PURCHASING THE PROPERTY **AS-IS, WHERE-IS, AND WITH ALL FAULTS.** AS SET FORTH IN THE PRECEDING SENTENCE. EACH PARTY OR ANYONE CLAIMING BY THROUGH OR UNDER A PARTY, HEREBY FULLY WAIVES AND RELEASES THE OTHER PARTY, ITS EMPLOYEES, COMMISSIONERS, COUNCILMEMBERS, REPRESENTATIVES, ATTORNEYS AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS THAT IT MAY NOW HAVE OR HEREAFTER ACQUIRE, AGAINST THE OTHER PARTY AND ITS RESPECTIVE EMPLOYEES, COMMISSIONERS, COUNCILMEMBERS, REPRESENTATIVES, ATTORNEYS AND AGENTS FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION ARISING FROM OR RELATED TO ANY CONSTRUCTION DEFECTS, ERRORS, OMISSIONS, OR OTHER CONDITIONS AFFECTING THE PROPERTY. EACH PARTY FURTHER ACKNOWLEDGES AND AGREES THAT THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. THIS COVENANT RELEASING EACH PARTY SHALL SURVIVE CLOSING AND SHALL BE BINDING UPON EACH PARTY. EACH PARTY HEREBY ASSIGNS WITHOUT RECOURSE OR REPRESENTATION OF ANY NATURE TO THE OTHER PARTY EFFECTIVE UPON CLOSING, ANY AND ALL CLAIMS THAT A PARTY MAY HAVE FOR ANY SUCH ERRORS OMISSIONS OR DEFECTS OF THE PROPERTY. AS A MATERIAL COVENANT AND CONDITION OF THIS AGREEMENT, EACH PARTY AGREES THAT IN THE EVENT OF ANY SUCH CONSTRUCTION DEFECTS, ERRORS, OMISSIONS, OR ON ACCOUNT OF ANY OTHER CONDITIONS AFFECTING THE PROPERTY, INCLUDING WITHOUT LIMITATION, ANY CONDITONS RELATING TO THE ENVIRONMENT, SAFETY OR PUBLIC HEALTH, THE PARTY SHALL LOOK SOLELY TO THE OTHER PARTY'S PREDECESSORS OR TO SUCH CONTRACTORS AND CONSULTANTS AS MAY HAVE CONTRACTED FOR WORK IN CONNECTION WITH THE PROPERTY FOR ANY REDRESS OR RELIEF. UPON ANY ASSIGNMENT BY A PARTY OF ITS CLAIMS, SUCH PARTY RELEASES THE OTHER PARTY OF ALL RIGHTS, EXPRESS OR IMPLIED, THE ASSIGNING PARTY MAY HAVE AGAINST THE OTHER PARTY ARISING OUT OF OR

RESULTING FROM ANY ERRORS, OMISSIONS, OR DEFECTS IN THE PROPERTY. EACH PARTY FURTHER UNDERSTANDS THAT SOME OF THE OTHER PARTY'S PREDECESSORS IN INTEREST MAY BE OR BECOME INSOLVENT, BANKRUPT, JUDGMENT PROOF OR OTHERWISE INCAPABLE OF RESPONDING IN DAMAGES, AND EACH PARTY MAY HAVE NO REMEDY AGAINST SUCH PREDECESSORS, CONTRACTORS OR CONSULTANTS. AS OF THE CLOSING DATE, EACH PARTY RELEASES THE OTHER PARTY FROM ANY AND ALL LIABILITY IN CONNECTION WITH ANY CLAIMS WHICH A PARTY MAY HAVE AGAINST THE OTHER PARTY, FOR DAMAGE, LOSS, COMPENSATION, CONTRIBUTIONS, COST RECOVERY OR OTHERWISE, AGAINST THE OTHER PARTY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE EXISTENCE OF HAZARDOUS SUBSTANCES (AS DEFINED BELOW) AT, ON, UNDER OR ABOUT THE PROPERTY, OR ARISING UNDER ANY ENVIRONMENTAL LAWS (AS DEFINED BELOW), OR RELATING IN ANY WAY TO THE QUALITY OF THE INDOOR OR OUTDOOR ENVIRONMENT AT THE PROPERTY INCLUDING, WITHOUT LIMITATION, ANY RIGHT OF CONTRIBUTION UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, 42 U.S.C. § 9601 ET SEQ. AS AMENDED ("CERCLA"). AS USED HEREIN, THE TERM "HAZARDOUS SUBSTANCES" MEANS (I) HAZARDOUS WASTES, HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES, HAZARDOUS CONSTITUENTS, TOXIC SUBSTANCES OR RELATED MATERIALS, WHETHER SOLIDS, LIQUIDS OR GASES, INCLUDING BUT NOT LIMITED TO SUBSTANCES DEFINED AS "HAZARDOUS WASTES," "HAZARDOUS MATERIALS," "HAZARDOUS SUBSTANCES," "TOXIC SUBSTANCES," "POLLUTANTS," "CONTAMINANTS," "RADIOACTIVE MATERIALS," OR OTHER SIMILAR DESIGNATIONS IN, OR OTHERWISE SUBJECT TO REGULATION UNDER, THE TOXIC SUBSTANCE CONTROL ACT ("TSCA"), 15 U.S.C. § 2601 ET SEQ.; THE HAZARDOUS MATERIALS TRANSPORTATION ACT, 49 U.S.C. § 1802; THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), 42 U.S.C. § 9601, ET SEQ.; THE CLEAN WATER ACT ("CWA"), 33 U.S.C. § 1251 ET SEQ., THE SAFE DRINKING WATER ACT, 42 U.S.C. § 300F ET SEQ., THE CLEAN AIR ACT ("CAA"), 42 U.S.C. § 7401 ET SEQ.; AND IN ANY PERMITS, LICENSES, APPROVALS, PLANS, RULES, REGULATIONS OR ORDINANCES ADOPTED, OR OTHER CRITERIA AND GUIDELINES PROMULGATED PURSUANT TO THE PRECEDING LAWS OR OTHER FEDERAL, STATE OR LOCAL LAWS, REGULATIONS, RULES OR ORDINANCE NOW OR HEREAFTER IN EFFECT RELATING TO ENVIRONMENTAL MATTERS (COLLECTIVELY, THE "ENVIRONMENTAL LAWS"); AND (II) ANY OTHER SUBSTANCES, CONSTITUENTS OR WASTES SUBJECT TO ANY APPLICABLE FEDERAL, STATE OR LOCAL LAW, REGULATION OR ORDINANCE, INCLUDING ANY ENVIRONMENTAL LAW, NOW OR HEREAFTER IN EFFECT, INCLUDING BUT NOT LIMITED TO PETROLEUM, REFINED PETROLEUM PRODUCTS, WASTE OIL, WASTE AVIATION OR MOTOR VEHICLE FUEL, ASBESTOS, LEAD IN WATER, PAINT OR ELSEWHERE, RADON, POLYCHLORINATED BIPHENYLS (PCB'S) AND UREA FORMALDEHYDE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE PROVISIONS OF THIS SECTION 14 SHALL SURVIVE THE CLOSING.

EACH PARTY INTENDS FOR THIS RELEASE TO BE CONSTRUED TO PROVIDE THE BROADEST INTERPRETATION IN FAVOR OF A RELEASE OF CLAIMS AGAINST THE OTHER PARTY AND ALL AMBIGUITIES ARE TO BE RESOLVED IN FAVOR OF A RELEASE OF CLAIMS.

15. MISCELLANEOUS PROVISIONS.

- A. NOTICES. Any notices, consents or other communications required or permitted to be given pursuant to this Agreement must be in writing and shall be sent to the address set forth below (or such other address as the party might hereafter designate for itself by notice to the other parties as required hereby). Any such notice or communication shall be sufficient if sent by registered or certified mail, return receipt requested, postage pre-paid; by hand delivery; by overnight courier service; or by facsimile, with an original by regular mail. Any such notice or communication shall be effective on (a) the date of receipt if delivered personally; (b) three (3) days after deposit in an official depository under the regular care and custody of the United States Postal Service, if transmitted by registered or certified mail, return receipt requested; (c) the first business day after the date of deposit, if transmitted by overnight courier service, or (d) the date of transmission with confirmed answer back, if transmitted by facsimile, whichever shall first occur.

If to Seller: Clay Lewis Jenkins  
Dallas County Judge  
Dallas County  
411 Elm Street, Suite 200  
Dallas, TX 75202

With copies to: County of Dallas, Texas  
Attention: Amber White, Real Estate Services Manager  
Dallas County Engineering & Property Management  
600 Commerce Street, 9<sup>th</sup> Floor  
Dallas, Texas 75202  
Phone: 214.653.6437  
Fax: 214.653.6729  
Email: amber.white@dallascounty.org

Chong Choe  
Assistant District Attorney  
Dallas County Criminal District Attorney's Office  
Civil Division  
411 Elm Street, 5th floor  
Dallas, Texas 75202

If to Purchaser: City of Mesquite  
Attention: City Manager

Address: 1515 North Galloway Ave.  
Mesquite, Texas 75149

Phone: 972-216-6404

Email: ckeheley@cityofmesquite.com

City of Mesquite  
Attn: City Attorney  
1515 Galloway Ave.  
Mesquite, Texas 75149

Phone: 972-216-6272

Fax: 972-216-6442

Email: dpaschall@cityofmesquite.com

- B. **APPLICABLE LAW.** This Agreement shall be construed under and governed in accordance with the laws of the State of Texas. This Agreement is performable and venue for any action hereunder shall exclusively be in the federal and state courts physically located in Dallas County, Texas.
- C. **ATTORNEYS' FEES.** In any legal proceeding brought under or with relation to this Agreement or transaction, the prevailing party in such proceeding shall be entitled to recover court costs, reasonable attorneys' fees, and all other litigation expenses from the other.
- D. **INTEGRATION.** This Agreement 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, understandings, representations or warranties signed by the Parties which are not expressly set forth herein.
- E. **SURVIVAL.** Any warranty, representation, covenant or condition contained in this Agreement not otherwise consummated at the Closing will survive the Closing of this transaction for one (1) year.
- F. **BINDING EFFECT.** This Agreement shall inure to the benefit of and bind the Parties hereto and their respective heirs, legal representatives, successors and assigns; provided, however, that neither Party may assign this Agreement, in whole or in part, without the prior, written consent of the other, except as provided in Section 11.
- G. **TIME FOR PERFORMANCE.** Time is of the essence in this Agreement and each provision hereof. The Parties require strict compliance with the times for performance. If the last day to perform under a provision of this Agreement falls on a Saturday, Sunday or legal holiday, the final date of such period will be extended to the next day that is not a Saturday, Sunday, or legal holiday.

- H. **RIGHT OF ENTRY.** Purchaser shall have the right to enter upon the Property prior to Closing for the purposes of conducting studies, inspections, and assessments 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. Seller shall also have the right to enter upon the Purchase Equity prior to Closing for the purposes of conducting studies, inspections, and assessments of the Purchase Equity during normal business hours, so long as Seller does not unreasonably interfere with Purchaser's use of the Purchase Equity or cause damage to the Purchase Equity.
- I. **POWER TO EXECUTE.** Each person executing this Agreement warrants and represents that he is fully authorized to do so.
- J. **SEVERABILITY.** In the event any one or more of the provisions contained in this Agreement 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 Agreement shall be construed as if such invalid, illegal, or unenforceable provision is severed and deleted from this Agreement.
- K. **COUNTERPARTS.** This Agreement may be executed in a number of identical counterparts. Each such counterpart is deemed an original for all purpose and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart.
- L. **AMENDMENTS AND CHANGES IN THE LAW.** No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the Parties. Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in local, state, or federal law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.
- M. **SOVEREIGN IMMUNITY.** THIS AGREEMENT IS EXPRESSLY MADE SUBJECT TO SELLER'S SOVEREIGN IMMUNITY, PURCHASER'S GOVERNMENTAL IMMUNITY, TITLE 5 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE, AND ALL APPLICABLE FEDERAL AND STATE LAWS. THE PARTIES EXPRESSLY AGREE THAT, OTHER THAN AS SET FORTH HEREIN, NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY, OR A WAIVER OF ANY TORT LIMITATION, AND ANY DEFENSES THAT A PARTY HAS BY OPERATION OF LAW OR OTHERWISE. NOTHING IN THIS AGREEMENT IS INTENDED TO BENEFIT ANY THIRD PARTY BENEFICIARY.
- N. **GENDER; NUMBER.** Unless the context requires otherwise, all pronouns used in this Agreement 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.

- O. Patriot Act Representation. Seller and Purchaser each represent to the other that: (1) its property interests are not blocked by Executive Order No. 13224, 66 Fed. Reg. 49079; (2) it is not a person listed on the Specially Designated Nationals and Blocked Persons list of the Office of Foreign Assets Control of the United States Department of the Treasury; and (3) it is not acting for or on behalf of any person on that list.
- P. Consult an Attorney. This Agreement is a legally binding agreement. The parties to this Agreement acknowledge that they have been advised to have this Agreement reviewed by legal counsel before signing this Agreement.
- Q. Contra Proferentem. The doctrine of contra proferentem shall not apply to this Agreement. If an ambiguity exists in this Agreement, this Agreement shall not be construed against the party who drafted this Agreement, and such Party shall not be responsible for the language used.

*Signatures continued on following page*

IN WITNESS WHEREOF, the Parties hereto have accepted the terms of this Agreement in full, and caused this Agreement including the exhibits attached hereto and incorporated herein by reference for all purposes to be executed as of the dates set forth below.

PURCHASER:  
COUNTY OF DALLAS, TEXAS

BY: \_\_\_\_\_  
Clay Lewis Jenkins  
Dallas County Judge

Date of Execution: October \_\_\_\_, 2021

**Recommended:**

BY: \_\_\_\_\_  
Darryl Martin  
Commissioners Court Administrator

**APPROVED AS TO FORM\*:**

JOHN CREUZOT  
DISTRICT ATTORNEY

By: \_\_\_\_\_  
Chong Choe  
Assistant District Attorney

\*BY LAW, THE DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).

SELLER:  
CITY OF MESQUITE

By: \_\_\_\_\_  
Cliff Keheley  
City Manager

Date of Execution: October \_\_\_\_, 2021

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY AND PURCHASE EQUITY**

**LEGAL DESCRIPTION OF THE PROPERTY**

Land in the Jacob Lakey Survey, Abstract No. 810, Dallas County, Texas

**LEGAL DESCRIPTION OF THE PURCHASE EQUITY, PROPERTY 1**

A portion of Lots 1-4, Block B/20, Original Town of Mesquite, Dallas County, Texas

**LEGAL DESCRIPTION OF THE PURCHASE EQUITY, PROPERTY 2**

A portion of Lots 1-7, Block 19, Original Town of Mesquite and Lots 1-3, Block A, Crestwood Addition, Dallas County, Texas

**EXHIBIT "B"**

**PERSONAL PROPERTY**

**EXHIBIT "C"**

**PURCHASE EQUITY PERSONAL PROPERTY**