

REAL ESTATE CONTRACT FOR EXCHANGE OF PROPERTY

This real estate contract for exchange of real property (this "Agreement") is between **THE BOARD OF TRUSTEES OF THE FORNEY INDEPENDENT SCHOOL DISTRICT** ("School District") and the **CITY OF FORNEY, TEXAS** ("City"), as identified below, and is effective on the date of the last of the signatures by District and City as parties to this Agreement ("Effective Date").

School District: THE BOARD OF TRUSTEES OF THE FORNEY INDEPENDENT SCHOOL DISTRICT
Attn: Superintendent of Schools
600 S. Bois D'Arc
Forney, Texas 75126
Phone: (469) 762-4100
E-mail: jwterry@forneyisd.net
Type of entity: Independent School District and political subdivision of the State of Texas

School District's Attorney:
WALSH, GALLEGOS, TREVIÑO, RUSSO & KYLE, P.C.
Attn: Elisabeth Nelson
105 Decker Court, Suite 700
Irving, Texas 75062
Phone: 214-574-8800
E-mail: enelson@wabsa.com

City: CITY OF FORNEY, TEXAS
Attn: _____

Phone: _____
E-mail: _____
Type of entity: _____

City's Attorney:

Phone: _____
E-mail: _____

School District's Exchange Property: the surface only of an approximately 7.71 acre tract with improvements, located north of the current Warren Middle School, in the City of Forney, Kaufman County Texas, and more specifically depicted in **Exhibit A-1**, attached hereto and incorporated herein for all purposes ("School District's Exchange Property"). The conveyance of School District's Exchange Property will include all of the improvements located thereon and all fixtures attached thereto, if any, and all rights and interests of School District appurtenant to the

School District Exchange Property, including all streets, alleys, rights-of-way, and easements, strips and gores, and rights of ingress and egress.

City's Exchange Property. The surface only of an approximately 4.7 acre tract more specifically depicted in **Exhibit A-2**, attached hereto and incorporated herein for all purposes ("City Exchange Property"). The conveyance of the City Exchange Property will include all of the improvements located thereon and all fixtures attached thereto, if any, and all rights and interests of City appurtenant to the City Exchange Property, including all streets, alleys, rights-of-way, and easements, strips and gores, and rights of ingress and egress.

The School District Exchanged Property and City Exchange Property shall be referred to collectively as "Exchange Properties".

Title Company: Ranger Title Company
409 N. McGraw Street
Forney, Texas 75126
Attention: Sara Smith
Phone: (972) 564-2274
E-mail: SmithS@rangertitle.com

Earnest Money: \$1,000.00 for School District and \$1,000.00 for City. These Earnest Money deposits shall be tendered to the Title Company by the Earnest Money Deadline in Paragraph A.1 below. If either Party fails to deposit its respective Earnest Money deposit as required by this Agreement, then either Party may terminate this Agreement by written notice to the other at any time prior to the deposit of both Earnest Money deposits. If this Agreement is so terminated, then this Agreement shall be deemed to have terminated as of the date that the Earnest Money deposits were originally to have been deposited by the Parties, and there shall be no remedy hereunder to either the School District or City other than the termination of this Agreement.

County for Performance: This Agreement shall be performed in Kaufman County, Texas.

A. Deadlines and Other Dates

All deadlines in this Agreement expire at 5:00 P.M., Central Standard Time, on the day indicated. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence of this agreement. The Parties may agree by amendment to extend any or all deadlines if necessary.

1. **Earnest Money Deadline:** The Earnest Money deposits shall be tendered to the Title Company within five (5) days after the Effective Date.
2. **Delivery of Title Commitment for Exchange Properties:** Thirty (30) days after the Effective Date.
3. **Delivery of Survey for Exchange Properties:** Thirty (30) days after the Effective Date.
4. **Delivery of UCC Search:** Not applicable.

5. **Delivery of legible copies of instruments referenced in the Title Commitments and Surveys for Exchange Properties:** Thirty (30) days after the Effective Date.
6. **Delivery of Title Objections to the other Party for Respective Exchange Property:** Five (5) days after delivery of the last of the Title Commitment, Survey, and legible copies of the instruments referenced in them.
7. **Delivery of Records specified in Paragraph E.3 (“Review Materials”) to the other Party for Respective Exchange Property:** Ten (10) days after the Effective Date.
8. **End of Inspection Period for Exchange Properties:** Forty-five (45) Days after the Effective Date.
9. **Closing Date:** Sixty (60) days after the Effective Date or as otherwise agreed by the Parties.
10. **Closing Time:** 4:00 p.m. unless otherwise agreed by the Parties.

B. Exhibits: The following exhibits are attached to, and are incorporated by reference to and form a part of, this Agreement:

Exhibit A-1 – Description of the School District Exchange Property

Exhibit A-2 – Description of the City Exchange Property

Exhibit B-1 – Form of Deed for conveyance of School District’s Exchange Property

Exhibit B-2 – Form of Deed for conveyance of the City’s Exchange Property

Exhibit C – Form of Shared Use Agreement

C. Exchange of Property and Other Obligations.

1. **Property Exchange.** School District agrees to convey the School District Exchange Property to City in exchange and in consideration for City’s conveyance to School District of the City Exchange Property and the other consideration described herein. City agrees to convey the City Exchange Property to School District in exchange and in consideration for School District’s conveyance to City of the School District Exchange Property and the other consideration described herein. The promises by City and School District stated in this Agreement are the consideration for the formation of this Agreement. The Forms of Deed in **Exhibit B-1** and **B-2** will be used to convey the Exchange Properties. **School District and City agree that this Agreement shall not be binding upon or enforceable against School District until the Board of Trustees of the School District has approved this Agreement in a properly noticed open meeting of the Board of Trustees.**

2. **Reduction of City Fees.** As further consideration for this Agreement, City agrees to a fifteen percent (15%) reduction of fees, including, but not limited to permitting fees and inspection fees on the following School District facilities: (1) the next two middle schools to be built by School District within the City at locations to be determined by School District; (2) the next elementary school to be built by School District within the City at a location to be determined by School District; (3) the Rhea Intermediate School addition/expansion; and (4) the intermediate school renovations at the existing Warren facility.

3. *City Right of First Refusal.* If, after closing, the School District elects to sell or otherwise transfer all or any portion of the City Exchange Property to any third party for any purpose, whether separately or as part of a larger parcel of which the City Exchange Property will be a part, City shall have the right of first refusal to acquire the City Exchange Property on the same terms and consideration under which the School District would transfer the City Exchange Property to such third party and for no less than the fair market value of the City Exchange Property (as determined by an appraisal obtained by the School District). In such event, the School District shall provide a written notice (the “Refusal Notice”) of any such intended transfer of the City Exchange Property, setting forth all of the terms and conditions of the proposed transfer of the City Exchange Property (collectively, the “Transfer Terms”). The City shall have the right to acquire the City Exchange Property on the Transfer Terms. If the City desires to exercise such right, City shall deliver written notice of the exercise of the right of such right of first refusal (the “Exercise Notice”) to School District within forty-five (45) days after the delivery of the Refusal Notice from the School District to City. The closing of such sale shall be in accordance with the terms set forth on the Refusal Notice; provided that, the closing of such transfer shall not be earlier than sixty (60) days from the date of delivery of the Exercise Notice to the School District. In the absence of a stated closing date, the closing of the acquisition of the City Exchange Property by City shall be on the first business day next following the expiration of sixty (60) days following date of delivery of the Exercise Notice. In the event the City does not exercise its right of first refusal as herein provided, then City’s right of first refusal shall automatically terminate.

4. *School District Right of First Refusal.* If, after closing, the City elects to sell or otherwise transfer all or any portion of the School District Exchange Property to any third party for any purpose, whether separately or as part of a larger parcel of which the School District Exchange Property will be a part, School District shall have the right of first refusal to acquire the School District Exchange Property on the same terms and consideration under which the City would transfer the School District Exchange Property to such third party and for no less than the fair market value of the School District Exchange Property (as determined by an appraisal obtained by the City). In such event, the City shall provide a written notice (the “Refusal Notice”) of any such intended transfer of the School District Exchange Property, setting forth all of the terms and conditions of the proposed transfer of the School District Exchange Property (collectively, the “Transfer Terms”). The School District shall have the right to acquire the School District Exchange Property on the Transfer Terms. If the School District desires to exercise such right, School District shall deliver written notice of the exercise of the right of such right of first refusal (the “Exercise Notice”) to City within forty-five (45) days after the delivery of the Refusal Notice from the City to School District. The closing of such sale shall be in accordance with the terms set forth on the Refusal Notice; provided that, the closing of such transfer shall not be earlier than sixty (60) days from the date of delivery of the Exercise Notice to the City. In the absence of a stated closing date, the closing of the acquisition of the School District Exchange Property by School District shall be on the first business day next following the expiration of sixty (60) days following date of delivery of the Exercise Notice. In the event the School District does not exercise its right of first refusal as herein provided, then School District’s right of first refusal shall automatically terminate.

5. *Shared Use Agreement.* As further consideration for this Agreement, at Closing the School District and City shall enter into a shared use agreement for the City to utilize certain other designated real property owned by the School District for the purpose of community football and community soccer practices and associated parking. The Form of the Shared Use

Agreement is attached hereto and incorporated herein as **Exhibit C**.

This section C, including all subsections, shall survive closing.

D. Survey and Title Commitment

1. Surveys. “Survey” means a survey in the form required by the Title Company to insure fee title to the City Exchange Property or the School District Exchange Property. Each party, at such party’s expense, shall have the right to obtain a new survey on the property such party is receiving.

2. Title Commitments; Title Policy. “Title Commitment” means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the subject Exchange Property. The effective date stated in each Title Commitment must be after the Effective Date of this Agreement. “Title Policy” means an Owner Policy of Title Insurance issued by the Title Company, insuring fee title to the applicable Exchange Property, subject only to (i) the standard printed exceptions; and (ii) other exceptions, if any, which the Party acquiring such Exchange Property approves or is deemed to have approved (collectively, the “Permitted Exceptions”).

a. For School District Exchange Property. The Title Commitment for the School District Exchange Property and legible copies of documents referenced therein will be furnished by the Title Company to City by the deadline stated in section A.2 (“School District Exchange Property Title Policy”). The School District Exchange Property Title Policy will be issued by the Title Company referenced herein on the standard form promulgated by the State Board of Insurance of Texas insuring the City’s fee simple title to the School District Exchange Property to be good and indefeasible, subject to the terms of such policy and the exceptions set forth therein in a face amount equal to the fair market value allocable to the School District Exchange Property, and containing no exceptions other than the Permitted Exceptions.

b. For City Exchange Property. The Title Commitment for the City Exchange Property and legible copies of documents referenced therein will be furnished by the Title Company to the School District by the deadline stated in section A.2 (“City Exchange Property Title Policy”). The City Exchange Property Title Policy will be issued by the Title Company referenced herein on the standard form promulgated by the State Board of Insurance of Texas insuring the School District’s fee simple title to the City Exchange Property to be good and indefeasible, subject to the terms of such policy and the exceptions set forth therein in a face amount equal to the fair market value allocable to the City Exchange Property, and containing no exceptions other than Permitted Exceptions.

3. Review Materials. Not later than the deadline stated in A.7, each Party will provide to the other Party copies of or access (during regular business hours) to any leases, licenses, surveys, governmental notices, engineering reports and studies material to the Properties, which are in such Party’s possession (collectively, the “Review Materials”). Earnest money contracts, appraisals, unrecorded closing documents, closing statements, privileged communications under the attorney/client privilege, confidential business or trade information, and any partnership agreements or other documents which are not material are excluded from the disclosure requirement as Review Materials hereunder. All Review Materials will be delivered or provided to the other Party “**AS IS**” and without any representation or warranty.

4. Title Objections. City and School District shall have until the Title Objection Deadline stated in section A.6 to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify the other of objections to any of them (“Title Objection”). Each Party will be deemed to have approved all matters reflected by the Survey and Title Commitment if such Party has not made a Title Objection by the Title Objection Deadline. The matters that each Party either approves or is deemed to have approved will be included in the definition of Permitted Exceptions. If either Party notifies the other Party of any Title Objection, the notified Party has five (5) days from receipt of notice to notify the objecting Party whether the notified Party will attempt to cure the Title Objection[s] before closing (“Cure Notice”). If the notified Party does not timely give its Cure Notice, the objecting Party may, within five (5) days after the deadline for the giving of the Cure Notice, notify the other Party that this Agreement is terminated or the objecting Party will proceed to close, subject to the notified Party’s obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under the notified Party after the Effective Date, and cure only the Title Objection[s] that the notified Party has agreed to cure in the Cure Notice. If the objecting Party fails to timely give notice of its election to terminate, then the objecting Party will be deemed to waive its objection to the particular Title Objection and such item will be deemed a Permitted Exception. If a Party notifies the other party that it will attempt to cure a particular Title Objection, then the cure of such Title Objection will automatically become a condition precedent to the objecting Party’s obligation to close the transaction contemplated by this Agreement. If a new exception is added to a Title Commitment after the Title Objection Deadline, then the Party who initially approved such Title Commitment will have five (5) business days from receipt of notice of such new exception to object to such new item. If the applicable Party does not timely object to such new item then such new item will be deemed a Permitted Exception. If the applicable Party timely objects to such new item, then the process described above will be followed (i.e. the non-objecting Party will have the right to deliver a Cure Notice and the objecting Party will have the right to terminate this Agreement if the non-objecting Party elects not to attempt to cure the particular item, all within the time periods provided above). At or before closing, each Party must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under that Party after the Effective Date of this Agreement, and cure the Title Objections that the Party has agreed to cure.

E. Inspection Period. Each Party shall have a period of forty-five (45) days following the Effective Date of this Agreement, (“Inspection Period”) in order to inspect the property it will be acquiring and conduct such tests and studies it deems necessary, if any, subject to the terms of this Agreement. Each party, at such party’s expense, shall have the right to obtain a Phase I Environmental Study on the property such party is receiving.

1. Consent to Entry.

- a. Each Party’s right of access will be subject to the following terms and conditions:
 - i. The inspecting Party will not damage or impair the other Party’s Exchange Property in any way as a result of its activities thereon.
 - ii. The inspecting Party will not unreasonably interfere with existing operations or occupants of the Exchange Property being inspected, if any;

iii. The inspecting Party will notify the other in advance of its plans to conduct tests so that the owner of the Exchange Property may be present during the tests;

iv. The inspecting Party must repair any damage caused to the Exchange Property as a result of the inspecting Party's activities and restore the Exchange Property to its pre-inspection condition, as close as reasonably practicable, promptly after the alteration or damage occurs;

v. The inspecting Party will deliver to the other Party copies of all inspection reports that it prepares or receives from third-party consultants or contractors; and

vi. The inspecting Party will abide by any other reasonable entry rules imposed by the other Party with regard to the inspecting Party's entry.

2. ***Right to Terminate.*** Either may terminate this Agreement for any reason by notifying the other Party before the end of the Inspection Period.

F. REPRESENTATIONS, WARRANTIES, AND COVENANTS. As their respective sole and exclusive warranties and representations, each party represents to the other, and covenants that:

1. ***Representations.***

a. ***Authority.*** It has the authority to convey its Property to the other Party. All documents required by this Agreement to be executed and delivered to the other Party at Closing will be, duly authorized, executed, and delivered.

b. ***Clear Title.*** It has good and indefeasible title in fee simple to their respective Exchange Properties, free and clear of all liens (except those liens that will be released at or before closing), and no party, except as herein set forth, has or shall have on the Closing Date any rights in, or to acquire, either of the Exchange Properties, there being no other contracts outstanding for acquisition or lease of the Exchange Properties.

c. ***No Adverse Actions Pending.*** There are no actions, suits, claims, assessments, or proceedings pending or, to its knowledge, threatened that could materially adversely affect the ownership, operation, or maintenance of such Party's Exchange Property or its ability to perform hereunder.

d. ***All Bills Paid.*** All bills and other payments due with respect to the ownership, operation, and maintenance of its Property that could have an adverse impact on such Party's Exchange Property post-Closing have been paid or will be paid (i) in the ordinary course of business and (ii) prior to the Closing Date.

e. ***Employees.*** There are no employees engaged in the operation or maintenance of their respective Exchange Property for whom the acquiring Party will be responsible after Closing.

Should any of the foregoing representations be found to be incorrect as of the Closing Date with respect to either Party; the other Party, as its sole and exclusive remedy, may either waive the incorrect representation and proceed to Closing or terminate the Agreement.

2. ***Covenants Regarding Notice.*** Each Party covenants and agrees with the other Party that from and after the Effective Date of this Agreement until the Closing Date or the termination of this Agreement:

a. The Party will notify the other Party promptly upon receipt of any notice that any proceedings for the condemnation of such Party's Exchange Property, or any portion thereof, have been instituted.

b. The Party will advise the other Party promptly of any litigation, arbitration or administrative hearing concerning or affecting its Property of which such Party has actual knowledge or notice.

c. The Party will not encumber the subject Property, or grant any interest in, or allow or grant any encumbrance including restrictive covenants, upon title to its Property.

G. CONDITION OF THE PROPERTY UNTIL CLOSING; COOPERATION; NO RECORDING OF AGREEMENT

1. ***Maintenance and Operation.*** Until closing, the Parties will each (a) maintain their respective Properties as they existed on the Effective Date, except for reasonable wear and tear and casualty damage and damage caused by the other Party; (b) operate their Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting their Property. Until the end of the Inspection Period, neither Party will enter into, amend, or terminate any contract that affects their Property other than in the ordinary course of operating their Property and will promptly give notice to the other of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that the acquiring Party may consider the information before the end of the Inspection Period. If such notice is given within three (3) days before the end of the Inspection Period, then the Inspection Period will be extended for three (3) days with respect to the new item only. After the end of the Inspection Period, either Party may terminate this Agreement if the other enters into, amends, or terminates any contract that affects the Property without first obtaining the other's written consent.

2. ***Casualty Damage.*** Each Party will notify the other promptly after discovery of any casualty damage to their respective Properties. Neither Party will have an obligation to repair or replace their respective Property if it is damaged by casualty before the Closing Date. Either Party may terminate this Agreement if the casualty damage that occurs before Closing would materially affect its intended use of the Property, by giving notice to the other Party within five (5) days after receipt of notice of the casualty (or before closing if the notice of the casualty is received less than five (5) days before the Closing Date). If the Party does not terminate this Agreement, the other will convey the Property to that Party in its damaged condition and all insurance proceeds payable with respect to such casualty will be assigned to the acquiring Party.

3. ***Condemnation.*** Each Party will notify the other promptly after it receives notice that any part of their respective Properties has been or is threatened to be condemned or otherwise taken

by a governmental or quasi-governmental authority. Either Party may terminate this Agreement if the condemnation would materially affect its intended use of the Property by giving notice to the other Party within five (5) days after receipt of notice of the casualty (or before the Closing Date if the notice of the casualty is received less than five (5) days before the Closing Date). If the Party does not terminate this Agreement following such notice, (a) each Party have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to the Party acquiring the subject Exchange Property, and (c) if the taking occurs before Closing, the description of the Property will be revised to delete the portion taken.

4. ***Claims; Hearings.*** Each Party will notify the other promptly of any written notice claim or administrative hearing that is threatened, filed, or initiated before Closing that affects their respective Properties.

5. ***Cooperation.*** The Parties will cooperate with each other (a) before and after Closing, to transfer the applications, permits, and licenses held by the other and used in the operation of their respective Properties and to obtain any consents necessary for the other to operate the Property after closing and (b) before Closing, with any reasonable evaluation, inspection, audit, or study of their respective Properties prepared by, for, or at the request of the other.

6. ***No Recording.*** Neither Party may file this Agreement or any memorandum or notice of this Agreement in the real property records of any county. If, however, a Party records this Agreement or a memorandum or notice, the other may terminate this Agreement and record a notice of termination.

H. Default, Termination and Remedies. If either Party, breaches, defaults or fails to perform any of its obligations (“Default”) under this Agreement then the other Party shall provide the breaching Party with written notice which shall a) state, with particularity, the alleged Default and the action required to cure such Default; and b) contain a statement of intent to terminate this Agreement if the Default is not cured. Upon receipt of such notice of intent, the defaulting Party shall have ten (10) days after receipt of such notice in which to cure the alleged Default and to thereby prevent termination of this Agreement. The non-defaulting Party, at its sole option, may extend the time period to cure the alleged Default referenced above. Should such Default not be cured by the defaulting Party, the non-defaulting Party shall be entitled to terminate this Agreement by giving the defaulting Party written Notice of such termination. In such event, the non-defaulting Party shall be entitled to pursue any actions or remedies it may have at law or in equity to address the breach, default or non-performance, and to recover all costs, including reasonable attorneys’ fees as are equitable and just which were associated the default, breach or non-performance.

If either party terminates this Agreement in accordance with any of their respective rights to terminate this Agreement, including termination during the Inspection Period, the non-terminating Party will, within five (5) days of receipt of such termination notice, authorize Title Company to deliver the Earnest Money to the terminating Party, less \$100.00, which will be paid to the other as consideration for the right granted by each to terminate this Agreement. If this Agreement is terminated, each Party will promptly return to the other all documents relating to their respective Properties that were delivered to the other and all copies that the Party has made of the documents. After return of the documents and copies, neither Party will have further

duties or obligations to the other under this Agreement, except for those obligations that cannot be or were not performed before termination of this Agreement.

If either Party defaults under any provision of this Agreement or the fails to deliver documents to be delivered at or after Closing, the Parties acknowledge that monetary damages may be insufficient or impossible to accurately calculate and in such event that injunctive relief in lieu of or in addition to monetary damages should be available to the non-defaulting Party in any judicial proceeding.

I. Closing

1. Closing. Closing shall be defined as the closing of the transaction contemplated by this Agreement. This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. **Closing Documents.** The parties will execute and deliver the Closing Documents to the Title Company. The documents listed below are collectively known as the "Closing Documents."

On or before the Closing Date, School District will deliver the following items:

- A signed Special Warranty Deed to the School District Exchange Property in the form attached as **Exhibit B-1**
- A signed Shared Use Agreement in the form attached as **Exhibit C**
- Evidence of School District's authority to consummate this transaction
- Any notices or other documents or instruments provided for under this Agreement or reasonably necessary to convey the School District Exchange Property in accordance with this Agreement
- A "non-foreign" certificate as required by Section 1445 of the Internal Revenue Code sufficient to establish that withholding of tax is not required in connection with the transfer of the School District Exchange Property

On or before the Closing Date, City will deliver the following items:

- A signed Special Warranty Deed to the City Exchange Property in the form attached as **Exhibit B-2**
- A signed Shared Use Agreement in the form attached as **Exhibit C**
- Evidence of City's authority to consummate this transaction
- Any notices or other documents or instruments provided for under this Agreement or reasonably necessary to convey the City Exchange Property in accordance with this Agreement
- A "non-foreign" certificate as required by Section 1445 of the Internal Revenue Code sufficient to establish that withholding of tax is not required in connection with the transfer of the City Exchange Property

b. **Delivery of Deeds and Funds.**

(i) City will deliver a Special Warranty Deed to the City Exchange Property in a form substantially similar to the one attached hereto as **Exhibit B-2** to the Title Company. City will also deliver the amounts that City is obligated to pay under this Agreement to Title Company in readily available funds, acceptable to Title Company

(ii) School District will deliver a Special Warranty Deed to the School District Exchange Property in a form substantially similar to the one attached hereto as **Exhibit B-1** to the Title Company. The School District will also deliver the amounts that the School District is obligated to pay under this Agreement to Title Company in readily available funds, acceptable to Title Company.

c. **Disbursement of Funds; Recording; Copies.** Title Company will be instructed to disburse funds in accordance with this Agreement, record the deeds and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. **Possession.** School District will deliver possession of the School District's Exchange Property to City, subject to the Permitted Exceptions applicable to the School District Exchange Property existing at closing. City will deliver possession of the City Exchange Property to School District, subject to the Permitted Exceptions applicable to the City Exchange Property existing at closing.

2. **Transaction Costs**

a. **School District Exchange Property**

(i) **School District's Costs.** School District will pay for the City Exchange Property Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare and file the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by School District; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the cost of certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in Section A.5.; and School District's expenses and attorney's fees.

(ii) **City's Costs.** City will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; the costs to obtain the Survey, the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by City; the costs of work required by City to have the survey reflect matters other than those required under this Agreement; and City's expenses and attorney's fees.

b. **City's Exchange Property**

(i) **City's Costs.** City will pay for the School District Exchange Property Title Policy; one-half of the escrow fee charged by Title Company; the costs to prepare and file the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by City; Title Company's

inspection fee to delete from the Title Policy the customary exception for parties in possession; the cost of certificates or reports of ad valorem taxes; the costs to deliver copies of the instruments described in Section A.5.; and City's expenses and attorney's fees.

- (ii) ***School District's Costs.*** School District will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at City's expense; the costs to obtain the Survey, the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by School District; the costs of work required by School District to have the survey reflect matters other than those required under this Agreement; and School District's expenses and attorney's fees.

c. ***Ad Valorem Taxes.***

- (i) ***School District Exchange Property.*** School District represents that it is entitled to an exemption from ad valorem taxes during the time it owned the School District Exchange Property. If this exchange or City's use of the School District Exchange Property results in the assessment of any ad valorem taxes for the School District Exchange Property for the calendar year of closing, all such taxes and any associated costs will be paid by the City. City shall be responsible for notifying all taxing units having jurisdiction over the property of the change of ownership, if such notification is required by law, and City shall be responsible for any and all taxes, late fees or penalties assessed against the School District Exchange Property by reason of City's failure to so note the change of ownership. School District will, upon request, provide to City proof of School District's ownership of the property prior to the date of closing, and will assist City in demonstrating School District's exemption from ad valorem taxes.
- (ii) ***City Exchange Property.*** City represents that it is entitled to an exemption from ad valorem taxes during the time it owned the City Exchange Property. If this exchange or School District's use of the City Exchange Property results in the assessment of any ad valorem taxes for the City Exchange Property for the calendar year of closing, all such taxes and any associated costs will be paid by the School District. School District shall be responsible for notifying all taxing units having jurisdiction over the property of the change of ownership, if such notification is required by law, and School District shall be responsible for any and all taxes, late fees or penalties assessed against the City Exchange Property by reason of School District's failure to so note the change of ownership. City will, upon request, provide to School District proof of City's ownership of the property prior to the date of closing, and will assist School District in demonstrating City's exemption from ad valorem taxes.

d. ***Brokers' Commissions.*** None.

3. *Issuance of Title Policy.* The Parties will each cause Title Company to issue the title policies as soon as practicable after Closing.

J. Miscellaneous Provisions

- 1. Notices.** Any notice required by or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, e-mail transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given, if the attorneys have been identified by the parties.
- 2. Entire Agreement.** This Agreement, together with its exhibits, and any Closing Documents (collectively “Transaction Documents”) delivered at closing constitute the entire agreement of the parties concerning the exchange of the City Exchange Property and the School District Exchange Property. There are no oral representations, warranties, agreements, or promises pertaining to the exchange of the City Exchange Property and the School District Exchange Property not incorporated in writing in the Transaction Documents.
- 3. Amendment.** This Agreement may be amended only by an instrument in writing signed by the Parties.
- 4. Prohibition of Assignment.** Neither party may assign this Agreement or any of its rights or obligations under it without the other party’s prior written consent; any attempted assignment without such consent shall be void. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.
- 5. Survival.** The obligations of this Agreement that cannot be performed before termination of this Agreement or before Closing will survive termination of this Agreement or Closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Agreement, the Closing Documents will control.
- 6. Choice of Law; Venue.** This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in Kaufman County, Texas.
- 7. Waiver of Default.** It is not a waiver of default if the non-defaulting Party fails to declare immediately a default or delays taking any action with respect to the default.
- 8. No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Agreement.
- 9. Severability.** The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.
- 10. Ambiguities Not to Be Construed against Party Who Drafted Agreement.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

11. *No Special Relationship.* The Parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

13. *Waiver of Consumer Rights.* **EACH PARTY WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41, *et seq.*, OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, EACH PARTY VOLUNTARILY CONSENTS TO THIS WAIVER.**

14. *Execution.* This agreement is entered into by and between the undersigned parties, and shall be effective on the date ("Effective Date") of the last of the signatures by School District and City.

SCHOOL DISTRICT:

**THE BOARD OF TRUSTEES OF THE
FORNEY INDEPENDENT SCHOOL
DISTRICT**

By: _____
Dr. Justin Terry, Superintendent of Schools

Date: _____

CITY:

CITY OF FORNEY, TEXAS,

By: _____
Printed Name: _____
Title: _____

Date: _____

Title Company acknowledges receipt of copy of this Real Estate Contract for Exchange of Property signed by the School District and City on this the ____ day _____, 2022.

RANGER TITLE COMPANY

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A-1
SCHOOL DISTRICT'S EXCHANGE PROPERTY (7.71 Acres)

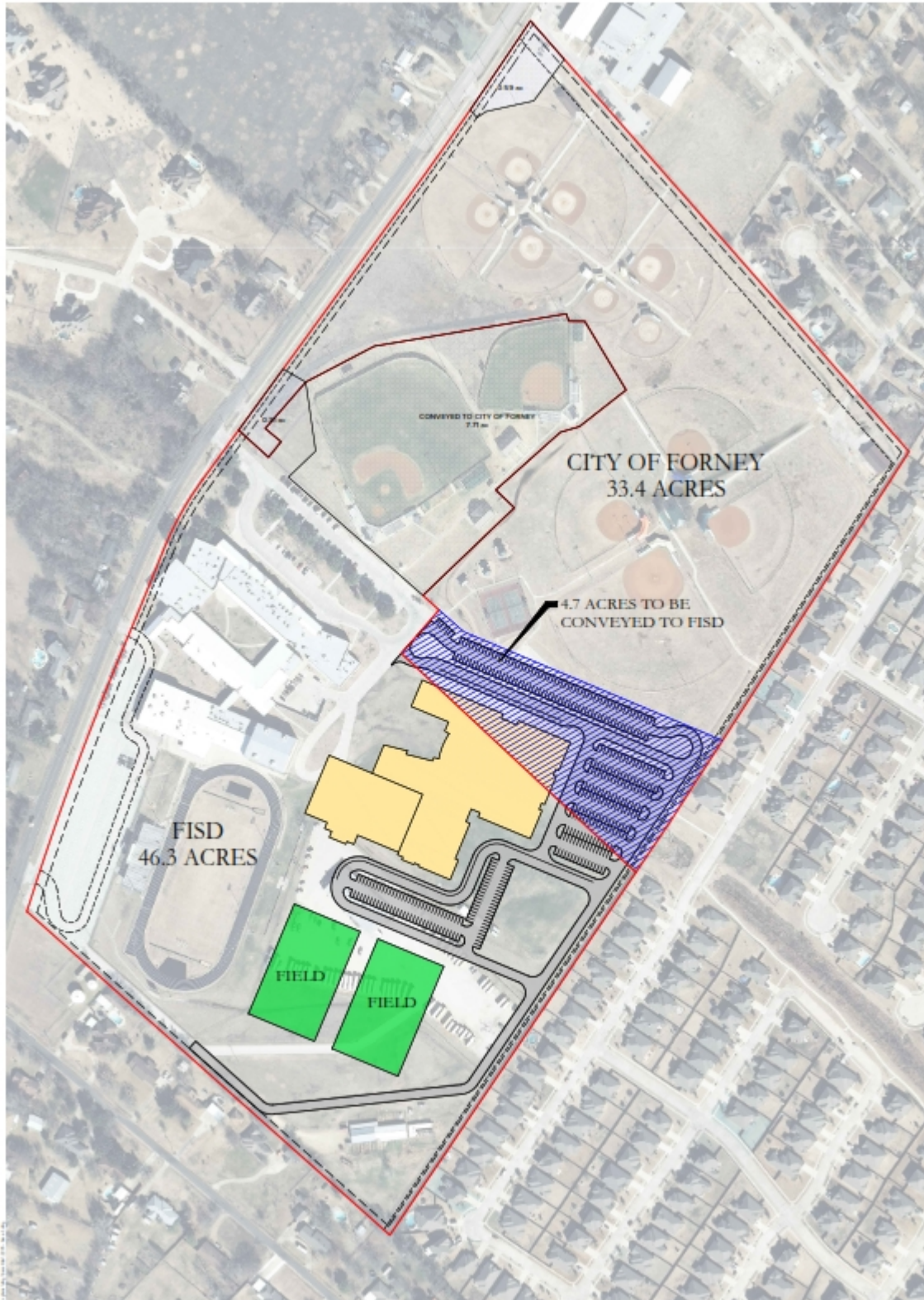


Exhibit A-2
CITY'S EXCHANGE PROPERTY (4.7 Acres)

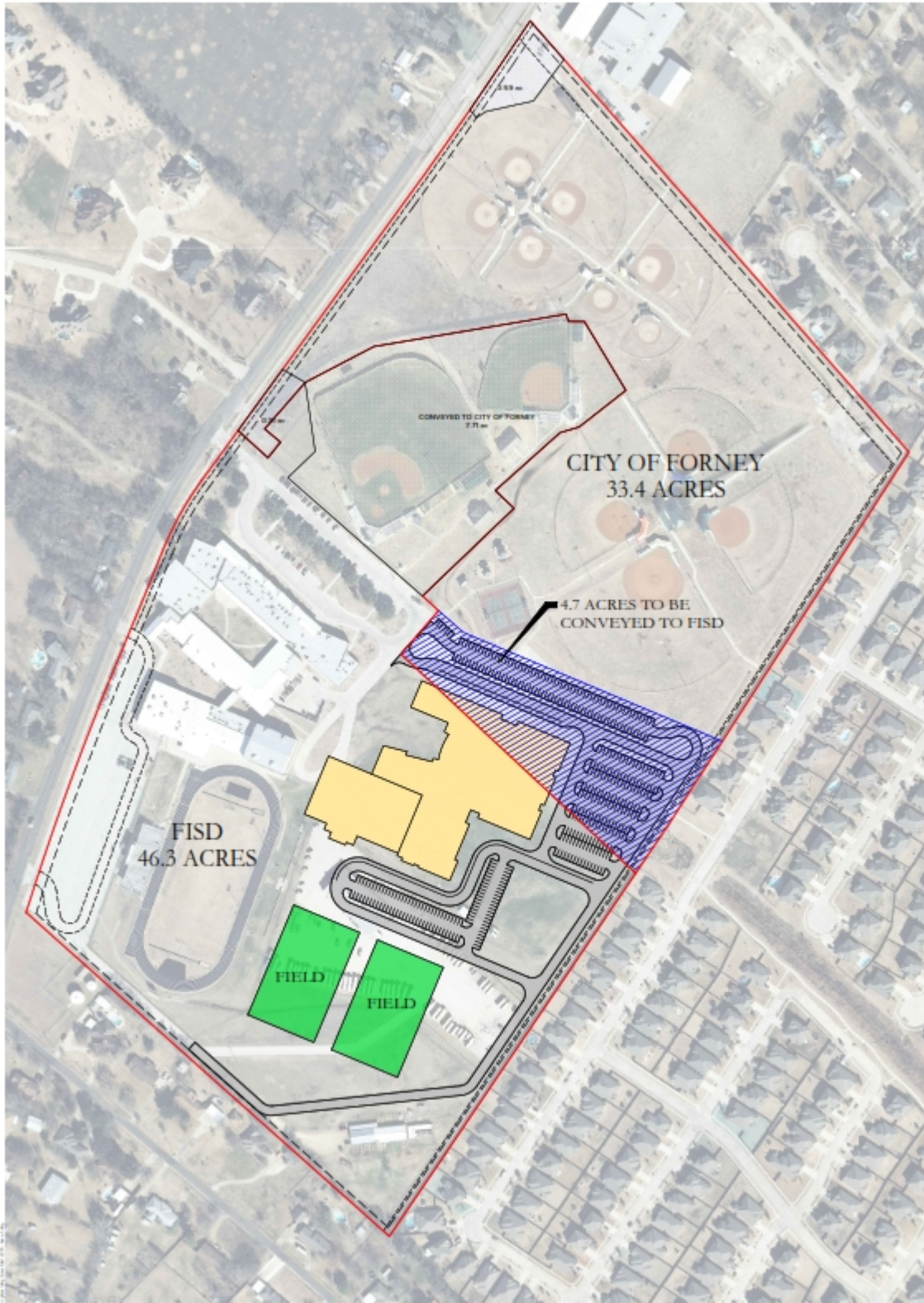


EXHIBIT B-1

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

SPECIAL WARRANTY DEED

Date: _____

Grantor: THE BOARD OF TRUSTEES OF THE FORNEY INDEPENDENT SCHOOL DISTRICT, an independent school district and political subdivision of the State of Texas

Grantor's Mailing Address: 600 S. Bois D'Arc, Forney, Texas 75126, Kaufman County

Grantee: CITY OF FORNEY, a Texas municipal corporation

Grantee's Mailing Address: 101 Main Street East, Forney, Texas 75126, Kaufman County

Consideration: TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration.

Property (including improvements): The real property in Kaufman County, Texas, more fully described in **Exhibit "A"**, attached hereto and incorporated herein by reference, together with all buildings and other improvements located thereon and all fixtures attached thereto, if any, and all rights and interests of Grantor appurtenant thereto, including all streets, alleys, rights-of-way, and easements, strips and gores, and rights of ingress and egress.

Reservations from and Exceptions to Conveyance and Warranty: The matters set forth in **Exhibit "B"** attached hereto and incorporated herein to the extent such matters are valid, subsisting, and affect the Property or any portion thereof.

For Grantor and Grantor's heirs, successors and assigns forever, a reservation of all oil, gas and other minerals in and under and that may be produced from the Property. Grantor waives and conveys to Grantee the right of ingress and egress to and from the surface of the Property relating to the portion of the mineral estate owned by Grantor and any and all rights to disturb the surface of the Property in any manner in connection with development, exploration and/or exploitation of the portion of the mineral estate owned by Grantor.

THE PROPERTY IS SOLD AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT THE SALES PRICE REFLECTS SUCH CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,

EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND THE LIMITED WARRANTIES AND REPRESENTATIONS CONTAINED IN THE AGREEMENT BY AND BETWEEN GRANTOR AND GRANTEE, THE SALE OF THE PROPERTY IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (A) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE COMPLIANCE WITH ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE SOIL CONDITIONS, WATER, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (E) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (F) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (J) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER. GRANTEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE. GRANTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS.

Grantor, for the consideration and subject to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, grants and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors and assigns forever; and it does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said premises unto Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, when the claim is by, through or under Grantor but not otherwise.

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

THE BOARD OF TRUSTEES OF THE FORNEY
INDEPENDENT SCHOOL DISTRICT

By: EXHIBIT ONLY – NOT FOR SIGNATURE
_____, President, Board of Trustees

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF KAUFMAN §

BEFORE ME, a Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is the President of the Board of Trustees of the Forney Independent School District; that he was authorized to execute such instrument pursuant to resolution of the Board of Trustees adopted on _____ [date]; and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____, 2022.

EXHIBIT ONLY – NOT FOR SIGNATURE
Notary Public, State of Texas

Return to Grantee's Address:

[ATTACH – Exhibit A -- Property Description and Exhibit B – Permitted Exceptions]

EXHIBIT B-2

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

SPECIAL WARRANTY DEED

Date: _____

Grantor: CITY OF FORNEY, a Texas municipal corporation

Grantor's Mailing Address: 101 Main Street East, Forney, Texas 75126, Kaufman County

Grantee: THE BOARD OF TRUSTEES OF THE FORNEY INDEPENDENT SCHOOL DISTRICT, an independent school district and political subdivision of the State of Texas

Grantee's Mailing Address: 600 S. Bois D'Arc, Forney, Texas 75126, Kaufman County

Consideration: TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration.

Property (including improvements): The real property in Kaufman County, Texas more fully described in **Exhibit "A"**, attached hereto and incorporated herein by reference, together with all buildings and other improvements located thereon and all fixtures attached thereto, if any, and all rights and interests of Grantor appurtenant thereto, including all streets, alleys, rights-of-way, and easements, strips and gores, and rights of ingress and egress.

Reservations from and Exceptions to Conveyance and Warranty: The matters set forth in **Exhibit "B"** attached hereto and incorporated herein to the extent such matters are valid, subsisting, and affect the Property or any portion thereof.

For Grantor and Grantor's heirs, successors and assigns forever, a reservation of all oil, gas and other minerals in and under and that may be produced from the Property. Grantor waives and conveys to Grantee the right of ingress and egress to and from the surface of the Property relating to the portion of the mineral estate owned by Grantor and any and all rights to disturb the surface of the Property in any manner in connection with development, exploration and/or exploitation of the portion of the mineral estate owned by Grantor.

THE PROPERTY IS SOLD AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND THE LIMITED WARRANTIES AND REPRESENTATIONS CONTAINED IN THE AGREEMENT BY AND BETWEEN GRANTOR AND GRANTEE, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT THE SALES PRICE REFLECTS SUCH

CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, THE SALE OF THE PROPERTY IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (A) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE COMPLIANCE WITH ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE SOIL CONDITIONS, WATER, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (E) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (F) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (J) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER. GRANTEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE. GRANTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS.

Grantor, for the consideration and subject to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, grants and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and Grantee's successors and assigns forever; and it does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said premises unto Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and Exceptions to Conveyance and Warranty when the claim is by, through or under Grantor but not otherwise.

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

CITY OF FORNEY, TEXAS

By: EXHIBIT ONLY – NOT FOR SIGNATURE

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS

§

ACKNOWLEDGMENT

§

COUNTY OF KAUFMAN

§

BEFORE ME, a Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he/she is the _____; that he/she was authorized to execute such instrument and that said instrument is executed on behalf of and as the free and voluntary act and deed of _____ for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____, 2022.

EXHIBIT ONLY – NOT FOR SIGNATURE

Notary Public, State of Texas

Return to Grantee’s Address:

[ATTACH – Exhibit A Property Description and Exhibit B Permitted Exceptions]

EXHIBIT C

SHARED USE AGREEMENT

INTERLOCAL AGREEMENT FOR THE USE OF CERTAIN PROPERTY OWNED BY THE FORNEY INDEPENDENT SCHOOL DISTRICT

This Interlocal Agreement for the Use of Certain Property Owned by the Forney Independent School District (“Agreement”) is entered into by and between the Forney Independent School District (“FISD” or the “District”), a Texas public school district, and the City of Forney (“City”), a Texas municipal corporation, collectively referred to as the “Parties.” This Agreement is entered into in accordance with the terms of Chapter 791 of the Texas Government Code.

WHEREAS, the District owns an approximately 8-acre tract of land located at 701 S. Bois D’Arc St., Forney, TX 75126, formerly known as Johnson Elementary School and currently named the Forney Admin Annex., (the “Annex Property”), which includes several structures, parking areas, and a field; and

WHEREAS, the City desires to utilize the Annex Property field for community soccer practices, and available parking spaces (the “Soccer Field Property”), which use does not conflict with District’s use of the Annex Property; and

WHEREAS, the District owns an approximately 10-acre tract of land located at 600 S. Bois D’Arc St., Forney, TX 75126, currently housing the Forney Administration building (the “Admin Property”), which includes several structures, parking areas, and a football field; and

WHEREAS, the City desires to utilize the Admin Property football field for community football, and available parking spaces (the “Football Field Property”), which use does not conflict with District’s use of the Admin Property; and

WHEREAS, the purpose of this Agreement is to allow the City to use the Soccer Field Property and Football Field Property (collectively herein the “Subject Property”), and to set expectations and requirements for the Parties in relation to use of the Subject Property; and

WHEREAS, the City and the District desire to develop the most effective and efficient use of facilities for the citizens of Forney and the students and staff of the District and have identified certain common, legitimate public purposes in entering into this Agreement; and

WHEREAS, the District and the City will each receive a benefit from this arrangement under the terms of this Agreement; and

WHEREAS, the governing bodies of the District and the City have each met and considered this Agreement, and have authorized the execution of this Agreement by their designated representatives; and

NOW, THEREFORE, for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the District and the City, the Parties hereby agree as follows:

I. Covered Property. This Agreement governs the City's use of the Subject Property, more specifically depicted in **Exhibit A-1** and **Exhibit A-2**, which is attached hereto and incorporated by reference. This Agreement is limited to the Subject Property and does not authorize the City to use any other portion of the Subject Property. The District may, but is not obligated to, install fencing between the fields and other portions of the Annex Property and Admin Property.

II. Terms of Use. For the duration of this Agreement, the District hereby authorizes the City to make use of the Soccer Field Property for the sole purpose of community soccer practices and parking; and the District hereby authorizes the City to make use of the Football Field Property for the sole purpose of community football and parking.

- a. The City shall not use the Subject Property for any other purpose, except with prior written consent from the District's Board of Trustees.
- b. The City is not permitted to authorize use of the Subject Property by any other individuals or groups; however, the City may allow general use by the public for the sole purpose of soccer, football, and parking vehicles.
- c. The City shall not make any improvements or alterations to the Subject Property without prior written consent from the District. Any improvements made to the Subject Property without prior consent may be removed by the District at the City's expense, or, at the District's option, will become the property of the District and the City will receive no reimbursement for the improvements.
- d. The City shall not suffer, allow, or permit the Subject Property to be damaged and in consideration for the use of the Subject Property, the City shall be responsible for the repair of any damage to the Subject Property, including damage resulting from normal wear and tear. The City shall secure and maintain the Subject Property in good and orderly condition and free of trash or refuse, including maintenance of any green spaces of the Subject Property. The District shall not be liable for any property damage, personal injury, theft or other loss associated with City/public use of the Subject Property. The City shall not create any nuisance or permit any waste or use at the Subject Property which would be construed as extra hazardous, would increase the insurance premiums on the Subject Property or void the insurance policy covering such Subject Property.
- e. The City's use of the Subject Property under this Agreement shall be in accordance with all applicable laws, ordinances and District's Board Policies, including but not limited to Board Policy GKD.

III. Term, Renewal and Termination. This Agreement shall commence on the later of (a) the date of execution by both parties; or (b) November 1, 2022, and shall continue for a term of twenty (20) years from the date of commencement (the "Term"). The Parties may, by mutual written agreement, renew this Agreement for additional terms of ten (10) years each. Neither party may terminate this Agreement for the first two (2) years of the initial term. After the first two (2) years of the initial term have elapsed, either Party may terminate this Agreement, at any time and for any reason, upon six (6) months written notice to the other Party.

IV. City Right of First Refusal

If the School District elects to sell or otherwise transfer all or any portion of the Subject Property to any third party for any purpose, whether separately or as part of a larger parcel of which the Subject Property will be a part, City shall have the right of first refusal to acquire the Subject Property on the same terms and consideration under which the School District would transfer the Subject Property to such third party and for no less than the fair market value of the Subject Property (as determined by an appraisal obtained by the School District). In such event, the School District shall provide a written notice (the "Refusal Notice") of any such intended transfer of the Subject Property, setting forth all of the terms and conditions of the proposed transfer of the Subject Property (collectively, the "Transfer Terms"). The City shall have the right to acquire the Subject Property on the Transfer Terms. If the City desires to exercise such right, City shall deliver written notice of the exercise of the right of such right of first refusal (the "Exercise Notice") to School District within forty-five (45) days after the delivery of the Refusal Notice from the School District to City. The closing of such sale shall be in accordance with the terms set forth on the Refusal Notice; provided that, the closing of such transfer shall not be earlier than sixty (60) days from the date of delivery of the Exercise Notice to the School District. In the absence of a stated closing date, the closing of the acquisition of the Subject Property by City shall be on the first business day next following the expiration of sixty (60) days following date of delivery of the Exercise Notice. In the event the City does not exercise its right of first refusal as herein provided, then City's right of first refusal shall automatically terminate.

V. Miscellaneous Provisions.

- a. This Agreement is not a lease, does not create a landlord-tenant or lessor-lessee relationship between the Parties, and does not constitute the granting of an easement. The City does not have the rights of a lessee or tenant, nor does this Agreement confer or convey any rights of ownership to the City. Academic and extracurricular activities sponsored by the District shall have priority when any use is scheduled. The Superintendent or designee shall have authority to cancel City's use of the Subject Property if an unexpected conflict arises with a District activity.
- b. Any notice required or permitted under this Agreement shall be in writing, and will be deemed to be delivered (whether actually received or not) when deposited into the U.S. Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. The following contact information shall be used by the Parties for the purpose of providing notice under this Agreement. This information may be changed by either party through written notice delivered as provided herein.

Superintendent of Schools
Forney ISD
600 S. Bois D'Arc Street
Forney, Texas 75126

City Manager
City of Forney
101 E. Main Street
Forney, Texas 75126

- c. Nothing in this Agreement shall be construed as creating any right, cause of action, or claim of waiver or estoppel for or on behalf of any third party, nor shall it be construed as a waiver or modification of the availability of the defense of governmental immunity, or of any other legal defense as to any third party under the laws of this State.
- d. In the event that any one or more of the provisions contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect the remaining provisions. It is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision will be considered for addition to this Agreement that is legal, valid and enforceable and that is as similar in terms as possible to the provisions found to be illegal, invalid or unenforceable.
- e. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written, previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.
- f. This Agreement may be executed in any number of counterparts, each of which will be regarded as an original and all of which will constitute one and the same instrument.
- g. Each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

This Agreement is hereby approved and executed by the authorized representatives of the Parties:

For the City:

 Printed Name: _____
 Title: _____

 Date

For the District:

 Dr. Justin Terry, Superintendent of Schools

 Date

EXHIBIT A-1

Depiction of Soccer Field Property

[to be attached]

EXHIBIT A-2

Depiction of Football Field Property

[to be attached]