

## REAL ESTATE CONTRACT

THIS CONTRACT OF SALE is made by and between DOLLY C. OLDEN, a widow, ("SELLER"), and the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("BUYER"), upon the terms and conditions set forth herein.

### ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey a 76 acre tract of land, more or less, in fee simple by General Warranty Deed and BUYER agrees to purchase and pay for said 76 acre tract, being out of that certain 120 acres of land heretofore conveyed from Dymple Carll Creagor et al to Dolly Dymple Creagor Olden by deed dated May 2, 1955, of record in Volume 168, Page 339, Deed Records of Brazos County, Texas, said 76 acres lying and being situated in the Thomas Caruthers Survey, Abstract No. 9, and being generally described as the northwesterly most 76 acres out of said described 120 acre tract (a new metes and bounds description to be provided by a registered professional land surveyor and attached hereto upon completion), and to which such deed and its record and the description therein contained, reference is hereby made in aid of description and for all matters pertinent ("PROPERTY"), together with all and singular the rights and appurtenances pertaining to the PROPERTY, (all of such real property, rights, and appurtenances being herein referred to as the "PROPERTY"), for the consideration and subject to the terms, provisions, and conditions set forth herein. This Contract by BUYER to purchase the PROPERTY is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of BUYER's representatives to this CONTRACT OF SALE.

1.2 BUYER has requested Brazos County Abstract Company to furnish a Commitment for Title Insurance (the "Title Commitment") to insure title to the BUYER for BUYER's review together with legible copies of all instruments referred to in the Title Commitment. The BUYER shall have a period of fifteen (15) business days from the date of this contract to either (a) cure any such objections at BUYER's cost and expense; (b) waive such objections and accept such title as SELLER is able to convey or (c) terminate this Contract by written notice to the Title Company and to SELLER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

1.3 (a) The City of College Station, Texas, at its expense, has obtained or will obtain a survey of the PROPERTY, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. If the survey reflects any encroachments by the PROPERTY onto adjoining properties, BUYER shall have a period of fifteen (15) business days after receipt of such Survey within which to notify SELLER of BUYER's objection to any item shown on or referenced on the Survey. Any Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, BUYER may at its

election, on or before closing, attempt to cure same at its cost. If BUYER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

(b) The survey drawing shall be addressed to and certified in favor of the BUYER and the Title Company. The field notes description, as prepared by the surveyor, shall be used in the General Warranty Deed and a copy attached to this contract as Exhibit "A".

(c) SELLER agrees to join BUYER in making requests of oil and gas companies, lessees, or other holders of easements or property rights in an effort to obtain releases or agreements which BUYER deems necessary.

1.4 BUYER may, at its cost, order a Level 1 Environmental Site Assessment. BUYER shall have a period of ten (10) business days after receipt of the Environmental Site Assessment to review the assessment and notify SELLER of BUYER's rejection of the PROPERTY. BUYER may elect to cure the environmental problem. If BUYER elects not to cure or if SELLER fails to cure the environmental problem, this Contract shall be terminated and neither party will have any further liability.

1.5 The parties agree that general real estate taxes on the PROPERTY for the then current year, if any, shall be prorated as of the closing date and shall be adjusted in cash at the closing. **BUYER alone shall be liable for any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER.** The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness, and rents, if any, shall be prorated as of the closing date and shall be adjusted in cash at the closing. BUYER is exempt from any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER pursuant to §23.55(f) of the TEXAS TAX CODE (Vernon Supp. 2004/2005). If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. The BUYER and SELLER understand that the tax prorations shown on the Settlement Statement are based on the prior tax periods rate(s) or estimates for this year. The BUYER and SELLER agree to adjust the tax prorations shown on the Settlement Statement in accordance with TEX. TAX CODE §26.11 (Vernon 2001). BUYER is a tax exempt entity and will provide its tax exemption number.

All installments that have matured prior to the closing date on any special taxes or assessments shall be paid by SELLER; and any installments that are provided in the special assessment to mature after closing shall be assumed by BUYER.

1.6 The sale of the PROPERTY shall be made by a General Warranty Deed from SELLER to BUYER in the form prepared by BUYER attached hereto as Exhibit "B".

ARTICLE II  
PURCHASE PRICE

2.1 The purchase price for said PROPERTY shall be the sum of ONE MILLION TWENTY-SEVEN THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$1,027,200.00). The purchase price shall be payable in full at closing.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 SELLER hereby represents and warrants to BUYER as follows:

(a) SELLER has the full right, power, and authority to enter into and perform SELLER's obligations under this Contract.

(b) SELLER has no actual knowledge of any parties in possession of any portion of the PROPERTY, either as lessees, tenants at sufferance, trespassers, or other persons in possession, save and except oil and gas lessees and easements holders shown of record in the official records of Brazos County, Texas. Additionally, SELLER has no actual knowledge of any action by adjacent landowners which would prevent, limit, impede or render more costly BUYER's contemplated use of the PROPERTY.

(c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting the PROPERTY or any part thereof, except the possibility of BUYER to condemn the property for its purposes.

(d) The PROPERTY has not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.

(e) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PROPERTY or any part thereof.

(f) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract, in which case neither party shall have any further obligation to the other.

(g) SELLER has completed the disclosure notices for asbestos and lead-based paint attached hereto as Addenda 1 and 2.

(h) SELLER is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(i) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY, or the business operated thereon, if any, which could give rise to any mechanic's or materialmen's or other statutory lien against the PROPERTY, or any part thereof, or for which BUYER will be responsible.

(j) SELLER represents and warrants that no real estate broker or sales person of any kind has been engaged nor been involved in any manner in the negotiations of this contract and none has been granted any listing agreement nor even discussed the sale of such property with SELLER. Therefore, there is no real estate sales commission due or to be claimed as a result of this sale.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

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

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

#### ARTICLE V CLOSING

5.1 The closing shall be held at Brazos County Abstract Company within sixty (60) calendar days from the execution and tender of this Contract by BUYER, at such time and date as SELLER and BUYER may agree upon (the "closing date").

5.2 At the closing, SELLER shall:

(a) Deliver to BUYER the duly executed and acknowledged General Warranty Deed prepared by BUYER conveying good and marketable title in the PROPERTY, free and clear of any and all liens, encumbrances, except for the Reviewable Matters shown on Exhibit B of the title commitment not cured by BUYER.

(b) Deliver possession of the PROPERTY to BUYER.

(c) Deliver to BUYER, at BUYER's expense, a Title Policy insuring indefeasible title issued by Brazos County Abstract Company, in BUYER's favor in the full amount of the purchase price, insuring BUYER's favor in the full amount of the purchase price, insuring BUYER's fee simple interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.

- (d) Pay one-half (½) of the escrow fees.
- (e) Pay any and all required property taxes and prorated taxes for the year 2005.
- (f) Pay the costs to obtain, deliver and record releases or partial releases of all liens to be released at closing.
- (g) Pay the certificates or reports of ad valorem taxes.
- (h) Pay the SELLER's expenses and attorney fees.

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

- (a) Pay the balance of the purchase price.
- (b) Pay one-half (½) of the escrow fees.
- (c) Prepare, at its cost, the General Warranty Deed.
- (d) Pay the title insurance premium.
- (e) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense.
- (f) Pay the BUYER's expenses or attorney fees.
- (g) Pay the cost of the survey of the property and the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.
- (h) Pay the costs of work required by BUYER to have the survey reflect matters other than those required under this contract.

#### ARTICLE VI SPECIAL CONDITIONS

6.1 SELLER will retain any and all owned oil, gas and other minerals in, on or under the PROPERTY. SELLER agrees to waive the rights to use the surface of the PROPERTY to a depth of two hundred fifty feet (250') for any oil, gas or mineral drilling or exploration, subject only to existing drilling rights and surface rights held by current oil and gas lessees and which are not waived or released by such lessees. SELLER shall expressly reserve unto herself, her successors and assigns, all subsurface easements as may be necessary for directional drilling or horizontal drain holes for the purpose of producing the oil, gas or other minerals to be reserved.

6.2 The parties agree that this contract is made by and between the parties in good faith and to seek a resolution for the City's expressed need to take ownership as a means to facilitate the future closing of the existing solid waste disposal site (landfill) which has become increasingly close to SELLER's property in which she resides; and the parties have sought and obtained this agreement recognizing that the power of condemnation is available to the BUYER but is not the most favored procedure for obtaining ownership.

6.3 SELLER shall be entitled to remain in the residence now occupied by her for a period of twelve (12) months from the date of sale with reasonable assurance of her peaceful enjoyment of such property as her home for such period and additionally shall have the use and enjoyment of the shop and barn and 2.9 acres of land, all as shown on Exhibit "C" attached, for the twelve (12)-month period. SELLER shall execute the Lease attached hereto as Exhibit D. At the end of such twelve (12)-month period, SELLER must vacate the premises and deliver all improvements to BUYER, except SELLER shall be permitted, at her election to remove the shop, barn and cattle guard and retain ownership by successfully removing such improvements (not the home) off the premises within the said twelve (12)-month period, but not thereafter.

Water Meter  
also

6.4 BUYER shall erect a new fence to divide the property purchased from the property which shall remain as property owned by SELLER (out of the 120 acres); and shall provide a gate in such new fence at or very near its intersection with the fence along Rock Prairie Road. The fence shall be of equal specifications as the fence recently constructed along Rock Prairie Road by SELLER, as follows:

- American made barbed wire – five (5) strands, 10" off ground and 10" apart;
- Posts: 4" top 6-1/2' wood posts, 6-1/2' tee posts, built with 4 tee posts, 1 wood post, 4 tee posts, 1 wood post, 10' apart;
- 8" top 8' wood corner post with three on each end with corner posts being 6' apart with H brace;
- All corner posts in concrete with H brace in the middle;
- Gate: 16'2" tubular gate in the fence line located near the fence intersection with Rock Prairie Road.

6.5 BUYER agrees to excavate for a stock tank (pond) upon the remaining property of SELLER at a location of SELLER's choice and of a size and specifications provided by SELLER which shall be consistent with similar stock tanks (ponds) in the area, as follows:

- 2 acres +/- dug 12' deep at a location to be staked by SELLER after construction of the division fence.

ARTICLE VII  
BREACH BY SELLER

7.1 In the event SELLER fails to fully and timely perform any of SELLER's obligations under this Contract or fails to consummate the sale of the PROPERTY except BUYER's default,

BUYER may terminate this contract, seek specific performance, or proceed with its other options, including condemnation.

ARTICLE VIII  
BREACH BY BUYER

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

ARTICLE IX  
MISCELLANEOUS

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

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

SELLER: Dolly C. Olden  
7804 Rock Prairie Road - E  
College Station, TX 77845

BUYER: City of College Station  
Legal Department  
P.O. Box 9960  
College Station, Texas 77842

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

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

9.5 Invalid Provision: In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this

Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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

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

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

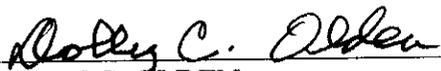
9.9 Gender: Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

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

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

EXECUTED on the dates shown below, the latest of which such dates shall constitute the effective date of the contract. Neither party shall be bound by this contract until and unless it is executed by both parties. This agreement shall expire or be of no further force or effect thirty (30) days after the execution of the first party to sign if it has not been executed by the other party within that time period.

SELLER:

  
DOLLY C. OLDEN  
DATE: July 8, 2005

BUYER:  
CITY OF COLLEGE STATION

BY: \_\_\_\_\_  
RON SILVIA, Mayor  
DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CONNIE HOOKS, City Secretary  
DATE: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
THOMAS E. BRYMER, City Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
JEFF KERSTEN, Finance and Strategic  
Planning Director  
Date: \_\_\_\_\_

  
\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

THE STATE OF TEXAS   §  
                                  §       ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
by RON SILVIA, as Mayor of the CITY OF COLLEGE STATION, a Texas Home Rule  
Municipal Corporation, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC in and for  
the STATE OF TEXAS

THE STATE OF TEXAS   §  
                                  §       ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §

This instrument was acknowledged before me on the 8 day of July, 2005,  
by DOLLY C. OLDEN.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for  
the STATE OF TEXAS

