

# AGREEMENT FOR PURCHASE AND SALE

**THIS AGREEMENT FOR PURCHASE AND SALE** ("Agreement") is made as of April 30, 2014, (the "Effective Date") by and between the **CITY OF WEST ALLIS** ("Seller") and **SCHOOL DISTRICT OF WEST ALLIS-WEST MILWAUKEE, et al**, ("Buyer"), each a "Party," and together known as the "Parties."

**FOR AND IN CONSIDERATION** of the premises and the undertakings and mutual covenants of the Parties set forth herein, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby covenant and agree as follows:

**1. PROPERTY.** Seller hereby agrees to sell and convey unto Buyer and Buyer hereby agrees to buy and pay for that certain tract of real property located along the east side of 72<sup>nd</sup> Street between W. Walker and W. Washington Streets, in the City of West Allis, Milwaukee County, Wisconsin, consisting of approximately 5.122 acres of land as more particularly described as Parcel A, B, and C in EXHIBIT # 1 attached hereto and made a part hereof (the "Real Property"); **TOGETHER** with all of Seller's interest in and to each and every easement, access right, privilege and appurtenance thereto, currently in existence (or to be created pursuant to this Agreement) serving or capable of serving the Real Property (the "Appurtenances"); and **TOGETHER** with all of Seller's interest in and to all plans, documents, records, correspondence, drawings, contracts, contract rights, claims, refunds, rebates, warranties, specifications, and referred to as the "Property").

**2. PURCHASE PRICE.** The purchase price for the Property shall be One Dollar and No Cents (\$1.00) plus or minus any adjustments provided hereunder (the "Purchase Price"), to be paid in cash at Closing (as hereinafter defined).

**3. RIGHT OF ENTRY.**

1           **A.     To Buyer.** Seller grants to the Buyer, its agents and contractors, the right  
2 to enter upon the Real Property at all reasonable times prior to Closing for the purpose of  
3 performing the physical and environmental tests, examinations and inspections identified  
4 in this Agreement or otherwise required in connection with Buyer's determination of the  
5 suitability of the Real Property for Buyer's intended uses.

6           **B.     Indemnification.** By the exercise of its right of entry to the Real  
7 Property, Buyer hereby undertakes and agrees to hold harmless, indemnify and defend  
8 Seller from and against any and all claims, losses, demands, expenses, damages or  
9 liabilities whatsoever arising out of the exercise by Buyer of the right and permission  
10 herein given and agrees it will promptly restore any damage it may cause to the Real  
11 Property, which indemnification, hold harmless and restoration obligations shall survive  
12 the termination of this Agreement.

13           **C.     License.** The Parties acknowledge that this right of entry is a license only  
14 and does not constitute a lease of or grant of any easement or other interests in Real  
15 Property; and Buyer agrees that in the exercise of such right it shall comply with all valid  
16 laws, ordinances, rules, orders or regulations of the United States, the State of Wisconsin,  
17 the County of Milwaukee, the City or any agencies, departments, districts or  
18 commissions thereof.

19           **4.     SELLER'S RIGHT TO REPURCHASE.**

20           **A.     Repurchase.** Should the Buyer decide to sell any or all of the Real  
21 Property the Seller retains the right to repurchase the Real Property for \$1.

22           **B.     Repurchase Parcel A.** The Seller retains the right, at its sole discretion, to  
23 repurchase Parcel A (the northern most parcel) plus the approximate 60 feet south of the  
24 property line that includes the vacated former Washington Street Right-Of-Way for one

1 dollar, at any time.

2 C. Run With The Land. The provisions of this section shall run with the land  
3 and shall be memorialized in the Memorandum of Agreements provided for in section 20.

4 5. CLOSING. The closing of the sale and purchase of the Real Property (the  
5 "Closing") shall be held at the offices of the West Allis City Attorney (or such other place  
6 as the Parties may mutually agree); on the day that is twenty-one (21) days after the date  
7 of execution of this agreement.

8 6. CLOSING COSTS. Buyer shall pay all closing costs including the cost to record  
9 the Deed and the Purchase & Sale Agreement, Memorandum of Agreement, and any  
10 other costs or fees. Each Party shall pay its own attorney's fee.

11 7. AS IS, WHERE IS.

12 A. Sale. The sale of the Real Property to Buyer hereunder shall be AS-IS,  
13 WHERE-IS, with all faults, and without representation or warranty of any kind except as  
14 expressly provided in this Agreement. Any other warranties or representations of any  
15 kind made either orally or in writing by any agent or representative of Seller or anyone  
16 purporting to be an agent or representative of Seller shall be of no force and effect.  
17 Buyer hereby acknowledges that it does not rely upon any representation or warranty  
18 made by Seller or by Seller's agents, and that none have been made, except as expressly  
19 provided in this Agreement.

20 B. Buyer Investigation. Prior to Closing, Buyer, with the cooperation and  
21 assistance of Seller as provided in this Agreement, will have investigated and will have  
22 knowledge of operative governmental laws and regulations (including, but not limited to,  
23 zoning, environmental and land use laws and regulations) to which the Real Property is  
24 subject and, based upon the foregoing, Buyer shall accept or not accept the Real Property

1 upon the basis of its review and determination of the applicability and effect of such laws  
2 and regulations, and based upon Seller's representations and warranties pursuant to this  
3 Agreement.

4 **C. Warranties.** The Buyer further acknowledges that, except as expressly  
5 provided herein, or in any of the Exhibits hereto or in any other document provided by  
6 Seller to Buyer, the Seller, its agents and employees and other persons acting on behalf of  
7 Seller have made no representation or warranty of any kind in connection with any matter  
8 relating to the condition, value, fitness, use or zoning of the Real Property upon which the  
9 Buyer has relied directly or indirectly for any purpose other than as may be expressly  
10 provided in this Agreement or any of its Exhibits.

11 **8. Use of Real Property.** The Buyer and all subsequent purchasers, except the  
12 Seller, shall use the Real Property for park and recreation purposes only. Any other use  
13 must first be approved by Seller. Such approval by Seller shall not be unreasonably  
14 withheld. The provisions of this section shall be memorialized in the Memorandum of  
15 Agreements provide for in section 20.

16 **9. NOTICES.** All notices permitted or required by this Agreement shall be given in  
17 writing and shall be considered given upon receipt if hand delivered to the Party or  
18 person intended, or one calendar day after deposit with a nationally recognized overnight  
19 commercial courier service, airbill prepaid, or two (2) business days after deposit in the  
20 United States mail, postage prepaid, by certified mail, return receipt requested, addressed  
21 by name and address to the Party or person intended as follows:

22 To Seller: City of West Allis  
23 Director of Development  
24 7525 West Greenfield Avenue  
25 West Allis, WI 53214  
26 Attn: Director of Development  
27

1 with a copy to: City of West Allis  
2 Office of the City Attorney  
3 7525 West Greenfield Avenue  
4 West Allis, WI 53214  
5 Attn: City Attorney  
6

7 To Buyer: School District of West Allis West Milwaukee, et al.  
8 Office of the Superintendent of Schools  
9 809 S. 70<sup>th</sup> Street, West Allis WI 53214  
10 Attn: Kurt D. Wachholz  
11

12 with a copy to:  
13  
14  
15  
16  
17  
18

19 **10. GOVERNING LAW AND VENUE.** This Agreement shall, in all respects  
20 whether as to validity, construction, capacity, performance, or otherwise, be governed by  
21 the laws of the State of Wisconsin. Any suit or proceeding arising out of or related to this  
22 Agreement shall be commenced and maintained only in a court of competent jurisdiction  
23 in the state or federal courts located in Milwaukee County, Wisconsin. Each party  
24 irrevocably consents to submit to the exclusive jurisdiction of such courts.

25 **11. EXECUTION IN COUNTERPARTS.** This Agreement may be executed  
26 simultaneously in one or more counterparts, each of which shall be deemed an original  
27 Agreement, but all of which together shall constitute one and the same instrument.

28 **12. TITLES AND HEADINGS.** Titles and headings to sections or subsections are  
29 for purposes of references only and shall in no way limit, define, or otherwise affect the  
30 provisions herein.

31 **13. INTERPRETATION.** Unless the context requires otherwise, all words used in  
32 this Agreement in the singular number shall extend to and include the plural, all words in  
33 the plural number shall extend to and include the singular, and all words in any gender

1 shall extend to and include all genders.

2 **14. CONSTRUCTION.** Seller and Buyer acknowledge that each Party and its  
3 counsel have reviewed and revised this Agreement and that the normal rule of  
4 construction to the effect that any ambiguities are to be resolved against the drafting Party  
5 shall not be employed in the interpretation of this Agreement or any amendments or  
6 exhibits hereto.

7 **15. TIME OF THE ESSENCE.** Time is of the essence with respect to all  
8 obligations arising hereunder.

9 **16. SEVERABILITY.** If any provision, clause, or part of this Agreement, or the  
10 application thereof under certain circumstances, is held invalid, the remainder of this  
11 Agreement or the application of such provision, clause, or part under other  
12 circumstances, shall not be affected thereby.

13 **17. NO RELIANCE.** No third party is entitled to rely on any of the representations,  
14 warranties, or agreements of Buyer or Seller contained in this Agreement. Buyer and  
15 Seller assume no liability to any third party because of any reliance on the  
16 representations, warranties and agreements of Buyer and Seller contained in this  
17 Agreement.

18 **18. SURVIVE THE CLOSING.** The agreements, covenants, warranties and  
19 representations contained herein which are specifically stated to survive Closing or  
20 termination of this Agreement shall survive the Closing or termination.

21 **19. REPRESENTATIONS AND WARRANTIES.** All statements contained in any  
22 certificate, instrument or document delivered by or on behalf of any Party pursuant to this  
23 Agreement and the transactions contemplated hereby shall be deemed representations and  
24 warranties by the Party making such statements unless otherwise expressly provided.

1           **20.    BINDING EFFECT.** The terms and conditions of this Agreement shall be  
2 binding upon and benefit the parties and their respective successors and assigns.

3           **20.    MEMORANDUM OF AGREEMENTS.** The parties shall, at Closing, execute a  
4 memorandum of agreement to be recorded in the office of the Milwaukee County  
5 Register of Deeds. The Memorandum of Agreement shall, at a minimum, set forth the use  
6 restrictions and buyback rights of Seller.

7           **21.    GOOD FAITH.** The Parties covenant and agree to act in good faith in the  
8 performance and enforcement of the provisions of this Agreement.

9           **22.    COSTS AND ATTORNEYS' FEES.** In the event that any action is commenced  
10 to enforce the terms of this Agreement, the prevailing Party in such action shall be  
11 awarded its costs and expenses, through all appeals, in addition to any other remedy  
12 awarded in such action. No attorney fees shall be awarded to either party.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23    Signature on Following Page.  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

1 **AGREED TO BY AND BETWEEN** Buyer and Seller on the date first set forth above.

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

**SELLER: THE CITY OF WEST ALLIS**

By: \_\_\_\_\_  
John F. Stibal, Director of Development

Dated: \_\_\_\_\_

**BUYER: THE SCHOOL DISTRICT OF WEST ALLIS –  
WEST MILWAUKEE, et al**

By: \_\_\_\_\_  
Kurt D. Wachholz, Superintendent of Schools

Dated: \_\_\_\_\_

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Approved as to form this \_\_\_\_ day  
of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Scott E. Post, City Attorney



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

**EXHIBIT #1**  
**LEGAL DESCRIPTION**

**Legal description for parcel A:**

All the land of the owner being located in the Southwest  $\frac{1}{4}$  of Section 34, T and I need you to put a picture where to put township 7 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin, describes as follows:

Parcel 1 of the Certified Survey Map No. 6524.

Said land contains 1.72 Acres, more or less.

---

**Legal description for parcels B and C:**

All the land of the owner being located in the Southwest  $\frac{1}{4}$  of Section 34, Township 7 North, Range 21 East, City of West Allis, Milwaukee County, State of Wisconsin, describes as follows:

Parcels 2 and 3 of the Certified Survey Map No. 3890.

Said land contains 3.40 Acres, more or less.