

ORDINANCE NO. 2013-07

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIESEL, TEXAS,
PROVIDING FOR THE PURCHASE OF REAL PROPERTY, GRANTING EXECUTION
AUTHORITY, AND APPROVING PAYMENT OF PURCHASE PRICE**

WHEREAS, the City Council of the City of Riesel, Texas wishes to purchase a tract of land described in the Contract of Sale attached hereto as Exhibit "A" for public purposes of the City; and

WHEREAS, the property to be purchased is to be acquired by deed acknowledged in the manner required for deeds by each person having an interest in the property; and

WHEREAS, the City Council finds that the acquisition of such property is in the best interest of the City of Riesel.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIESEL, TEXAS, that the property described in Exhibit "A" attached hereto, which is incorporated herein by reference, is hereby authorized to be PURCHASED, and that:

1. the Contract of Sale on the terms attached hereto as Exhibit "A" is hereby APPROVED and RATIFIED;
2. the Mayor or the Mayor Pro Tem is authorized to execute all documents necessary to acquire the property;
3. the Purchase Price of \$22,800 plus any City share of closing costs, if any, is hereby authorized to be paid to acquire the property subject to the seller complying with all requirements of the Contract of Sale, including with regard to title insurance and survey; and
4. City Staff are authorized to take such actions as are lawfully necessary to consummate the purchase of the property.

PASSED THIS 13TH DAY OF AUGUST, 2013 on the MOTION OF Gerry Suttle, AND SECOND OF Deena Tobias, BY A VOTE OF four (4) AYES TO zero (0) NAYS WITH (1) one ABSTENTIONS. THE MEETING AT WHICH THIS ORDINANCE WAS ADOPTED WAS NOTICED AND HELD IN ACCORDANCE WITH CHAPTER 551 OF THE GOVERNMENT CODE.

ATTEST:

Alisha Hanary
City Secretary

Regan Fitzpatrick
Mayor
City of Riesel

CONTRACT OF SALE

THIS CONTRACT OF SALE is made by and between **John Michael Lehrmann for the benefit of Monroe Lehrmann and Gladys Lehrmann, deceased**, hereinafter referred to as "Seller" and **the City of Riesel, Texas**, hereafter referred to as "Buyer" upon the terms, provisions and conditions set forth herein.

1. **PURCHASE AND SALE.** Seller agrees to sell and convey to Buyer and its assigns and Buyer and its assigns agrees to buy from Seller unimproved land situated in McLennan County, described as follows:

Lot 12, Block H, O'Rau Addition to the City of Riesel, McLennan County, Texas, which is more specifically described in Exhibit "A" attached hereto and incorporated by reference herein (hereinafter "Property").

2. **CONTRACT SALES PRICE.** \$22,800.00
("Sales Price").

3. **EARNEST MONEY.** Upon the execution of this Contract of Sale, Buyer shall deposit with First Title Company of Waco the sum of \$ ²⁰~~20~~00, which Earnest Money shall be held in escrow. At closing, the Earnest Money shall be applied ^{to}~~to~~ the purchase price.

4. **SURVEY AND TITLE BINDER.**

A. **Survey.** The Seller shall provide the Buyer with a new survey at the Seller's expense.

B. **Title Binder.** Within fifteen (15) days after the date of this contract, Seller shall, at Seller's expense, obtain:

(1) A title commitment ("Title Binder") covering the Property binding the Title Company to issue a Texas Owner's Policy of Title Insurance on the standard form of policy prescribed by the Texas State Board of Insurance at the Closing in the full amount of the purchase price; and

(2) True, correct and legible copies at Buyer's expense of any and all instruments referred to in the Title Binder as constituting exceptions or restrictions upon the title of Seller.

5. **APPROVAL PERIOD AND TITLE.**

A. Buyer shall have ten (10) business days after the receipt of the Title Binder delivered pursuant hereto to review same and to deliver in writing to Seller such objections as Buyer may have to anything contained therein. Any such item to which Buyer shall not object shall be deemed to be accepted by Buyer. If there are objections by Buyer, Seller shall in good faith attempt

to satisfy same prior to Closing, but Seller shall not be required to incur any cost to do so. If title objections are disclosed, Seller shall have ten (10) days to cure same. If Seller delivers written notice to Buyer on or before Closing Date that Seller is unable to satisfy such objections, or if, for any reason, Seller is unable to convey title in accordance with Section 5.B. below, Buyer may either waive such objections and accept such title as Seller is able to convey or terminate this contract by written notice to Seller and receive the return of its Earnest Money.

B. Seller represents and warrants to Buyer that at the Closing Seller shall have and shall convey to Buyer good and marketable title by General Warranty Deed subject only to taxes for the current year, any reservations, easements, restrictions or covenants that are on record and still valid and existing which are applicable to the property, and any other reservations, easements, discrepancies in boundaries, encroachments, restrictions or exceptions previously approved by Buyer in accordance with Paragraph 5.A., and free and clear of any liens or debts.

6. **CLOSING.**

A. The Closing of the sale ("Closing Date") shall be on or before 45 days from the date of this contract, subject to any delays of the Title Company in providing the Title Insurance Commitment.

B. At the Closing, Seller shall deliver to Buyer: (i) a General Warranty Deed conveying the Property containing any reservations or exceptions previously approved by Buyer in accordance with Paragraph 5.A.

C. At the Closing, Buyer shall deliver to Seller the Sales Price.

D. Rents and lease commissions, interest, insurance, utility charges, personal property taxes and ad valorem taxes for the then current year shall be prorated at the Closing effective as of the date of Closing. If for any reason utility charges cannot be accurately determined at date of Closing for proration purposes, Buyer may postpone proration of utility charges until after Closing and at such time as a statement for utility charge is received. Charges appearing on such statement shall then be prorated as of the date of Closing, and Seller shall tender in cash the cost of all utility charges to the date of Closing to Buyer upon demand. Any security deposits held by Seller shall be delivered to Buyer. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of the taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation but any difference in ad valorem taxes for the year of sale actually paid by Buyer shall be adjusted between the parties upon receipt of written evidence of the payment thereof. If Seller has claimed the benefit of laws permitting a special use valuation for the purposes of payment of ad valorem taxes on the Property, the Seller represents that he was legally entitled to claim such benefits. If this sale or subsequent use of the property after closing results in the assessment of additional taxes, such additional taxes, if any, shall be the obligation of Seller.

E. Except as expressly provided for herein Seller shall be responsible for those closing costs generally paid by a seller and Buyer shall be responsible for those closing costs generally paid by a buyer.

7. **NO TENANTS.** No tenants or lessees occupy or hold a leasehold right with regard to the Property.

8. **DEFAULT.** If Buyer fails to comply herewith, Seller may either (i) enforce specific performance hereof, (ii) terminate this contract and receive the Earnest Money as liquidated damages. If Seller fails to comply herewith for any other reason, Buyer may: (i) terminate this contract thereby releasing Seller from this contract; or (ii) enforce specific performance hereof.

10. **CONDEMNATION.** If any part of the Property is condemned prior to Closing Date, Seller shall promptly give Buyer written notice of such condemnation and Buyer shall have the option of either applying the proceeds on a pro rata basis of any condemnation award to reduce the Sales Price provided herein or declare this contract terminated by delivering written notice of termination to Seller.

11. **REPRESENTATIONS.** In addition to other representations made herein, Seller represents that there will be no Title I liens, unrecorded liens or Uniform Commercial Code liens against any of the Property on Closing Date. Seller further represents that:

- The Property is not located within a statutory tax district created under the Texas Water Code;
- The Property is not located within a public improvement district;
- The Property is not located within an agricultural development district;
- The Property is not part of a Homeowners Association or similar organization that requires the payment of fees;
- The Property is within the certificated service area of the City of Riesel for the purpose of water utilities.

Further, to the best of Seller's knowledge, Seller is not aware of:

- Flooding on the Property;
- Any environmental hazards or conditions affecting the Property;
- Any federally or state protected wetlands on the Property;
- Any underground fuel or chemical tanks on the Property;
- Any dump or landfill on the Property (including buried); or
- Any litigation or other proceedings challenging Seller's title to the Property or the Seller's authority to sell the Property.

If any representation above is untrue, this contract may be terminated by Buyer. Representations shall survive Closing.

12. **NOTICES.** Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, and addressed to the intended recipient at the address on the signature pages of this contract. Any address for notice may be changed by written notice delivered as provided herein.

13. **INTEGRATION.** This contract contains the complete agreement between the parties and cannot be varied except by the written agreement of the parties. The parties agree that there are no oral agreements, understanding, representations or warranties which are not expressly set forth herein.

14. **BINDING EFFECT.** This contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors and assigns where permitted by this contract. The effective date of this contract shall be the date upon which the last party signs.

15. **ASSIGNMENT.** Buyer may assign this Contract and all rights hereunder and shall be relieved of any future liability under this contract provided the assignee shall assume in writing all the obligations of Buyer hereunder.

16. **TEXAS LAW TO APPLY.** This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in McLennan County, Texas.

17. **LEGAL CONSTRUCTION.** In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. **TIME.** Time is of the essence.

19. **POSSESSION.** Possession of the Property shall be delivered to Buyer at Closing.

20. **NO BROKERS.** No broker or real estate agent has been involved on behalf of either the Seller or the Buyer, and no fees will be owed.

EXECUTED by Seller on this the 29 day of July, 2013.

SELLER:

John Michael Lehrmann FBO Monroe and
Gladys Lehrmann, deceased

By: John Michael Lehrmann

Print Name: Mike L

JOHN MICHAEL LEHRMANN

EXECUTED by Buyer on this the 23 day of July, 2013.

BUYER:

City of Riesel, Texas

By: Roger Fitzpatrick

Print Name: Roger Fitzpatrick

Title: Mayor

ATTEST:

By: Phyllis Koester

EXHIBIT "A"

All that tract of land situated in the County of McLennan, State of Texas, and a part of the J. D. Sanchez Survey;

Beginning at the SW corner of a tract of 124 acres of land sold to Fred Meier by Gottfried Von Jena by deed dated February 12, 1894, and recorded in Volume 105, Page 79, McLennan County Deed Records;

THENCE S 12 E with Weaver's East line to Weaver's S.E. corner;

THENCE N 78 E 54 vrs to corner, being on line with Siemers West line;

THENCE N 12 W 156 vrs to Meier's South line;

THENCE with Meier's South line to the place of beginning, containing 2 acres of land, more or less, and being the same property conveyed to Mary A. Fisher by deed from H. F. Meier, et ux, dated November 23rd, 1908, recorded in Volume 286, Page 120, of the Deed Records of McLennan County, Texas, to said deed and the record thereof reference is here made for a full and complete description of the property herein conveyed.