

**INTERGOVERNMENTAL AGREEMENT FOR THE
PURCHASE, SALE AND EXCHANGE OF REAL ESTATE**

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE, SALE AND EXCHANGE OF REAL ESTATE (this "**Agreement**") is entered into as of the ____ day of _____, 2016, by and between the **DEKALB COUNTY BOARD OF EDUCATION**, the governing body of the DeKalb County School District (the "**District**" or "**BOE**"), a political subdivision of the State of Georgia, and **THE CITY OF DUNWOODY, GEORGIA**, a municipality of the State of Georgia ("**City**").

WHEREAS, the City owns 27.8 acres +/- of land lying and being in Land Lot 376 and of the 18th District of DeKalb County, Georgia, commonly known as Dunwoody Park and Dunwoody Nature Center, and having an address of 5321 Roberts Drive, Dunwoody, Georgia 30338, which includes the 10.28 +/- acres identified or described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "City Property"); and

WHEREAS, the BOE owns (a) the Austin Elementary School property lying and being in Land Lot 376 of the 18th District of DeKalb County, Georgia comprised of approximately 9.8 acres +/- located at 5435 Roberts Drive, Dunwoody, Georgia as more particularly described on **Exhibit "B-1"** attached hereto and incorporated herein by reference (the "Existing Austin E.S. Property") and (b) the existing Peachtree Charter Middle School property located at 4664 North Peachtree Road, Dunwoody, Georgia 30338, which property includes the 7.98 +/- acres lying and being in Land Lot 354 of the 18th District of DeKalb County, Georgia identified or described on **Exhibit "B-2"** attached hereto and incorporated herein by reference (the "PCMS Property").

WHEREAS, BOE desires to acquire the City Property from the City for the purpose of new school construction and the City desires to sell the City Property to the BOE; and

WHEREAS, the City desires to acquire the Existing Austin E.S. Property and the PCMS Property from the BOE, and the BOE desires to sell the Existing Austin E.S. Property and the PCMS Property to the City; and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and BOE agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby incorporated into this Agreement in their entirety.

2. **Purchase and Sale; Intended Uses.** At Closing, the City agrees to convey the City Property to the BOE, and BOE agrees to acquire the City Property from the City, on and subject to the terms and conditions of this Agreement. At Closing, the BOE agrees to convey the Existing Austin E.S. Property and the PCMS Property to the City; and the City agrees to acquire the Existing Austin E.S. Property and the PCMS Property from the BOE on and subject to the terms and conditions of this Agreement. Following Closing, BOE will construct a new school on the City

Property acquired from City (the "New Austin Elementary School"); and City will construct replacement baseball fields (the "Baseball Fields") on the PCMS Property acquired from BOE. City covenants to complete the construction of the Baseball Fields. The BOE covenants that construction of the New Austin Elementary School will be structured and coordinated to ensure City maintains access to the baseball fields at one or the other site during construction.

3. **Post-Closing Property Use Agreements.**

a. **Leaseback.** After the Closing, the BOE will lease the Existing Austin E.S. Property from the City until the New Austin Elementary School construction is completed. The District will be responsible for utilities during its lease of the Existing Austin E.S. Property and shall maintain Existing Austin E.S. Property in accordance with the District's normal facility standards. Assuming the City completes construction of the Baseball Fields and turns over full possession of the City Property to the BOE within 8 months following Closing (anticipated as September 1, 2017), then the District will vacate the Existing Austin E.S. Property within 24 months after turnover of possession of the City Property to the BOE (anticipated by August 31, 2019) without any penalty. Minimum rent shall be payable thereafter, in advance, in the monthly installments, without demand, offset, abatement, diminution or reduction on the Existing Austin E.S. Property will be \$63,100 per month. Interest of 1% per month, or each fraction thereof, shall accrue on any payment required not received by the City by 5pm on the 10th day after such payment is due. Notwithstanding the provisions of this paragraph, should the City's construction of the Baseball Fields be delayed further than the 8 month period after closing, the District's 24-month period shall not start until said construction is complete.

b. **PCMS Shared Fields and Parking.** After the Closing, the City and District will cooperatively share fields, a track area and parking at the PCMS Property for twenty-five (25) years, under the following general terms:

i). The City will provide the following capital improvements to the track/football field (the "Football Field and Track Area"): (i) installation of sod by September 30, 2018; (ii) installation of irrigation by September 30, 2018; (iii) installation of goal posts at the time that the goal posts are in need of replacement; and (iv) construction and installation of field house for storage by December 31, 2019.

ii) City will pay for and repair the storm water system under the Football Field and Track Area by December 31, 2018, pay for and maintain the stormwater system, pay for and maintain the Football Field and Track Area, irrigate the Football Field and Track Area and pay for the water required to irrigate the Football Field and Track Area.

iii) City will have access to the Football Field and Track Area during certain non-school hours as defined and on the terms set forth below:

(1) Except as otherwise expressly provided herein, the District reserves use of the Football Field and Track Area for school activities, including

extracurricular activities, from 7:00 a.m. until 6:00 p.m., Monday through Friday, during each Academic Year. The "Academic Year" will be determined by the District on annual basis.

(2) During each Academic Year, City may use the Football Field and Track Area Monday through Friday from 6:00 p.m. until 11:00 p.m; and on Saturdays and Sundays from 7:00 a.m. until 11:00pm. During the Academic Year, City may also request the use of the Football Field and Track Area for the hours between 3:00 p.m. until 6:00 p.m. Monday through Friday, by submitting a written request for such use to the Principal of PMCS (the "Principal") not less than one week prior to the date City desires to use such Football Field and Track Area. The Principal shall use reasonable efforts to accommodate such request. During the Non-Academic Year, defined as the time between the end of each Academic Year and the beginning of the next Academic Year, City may use the Football Field and Track Area from 7:00 a.m. until 11:00 p.m. Monday through Sunday.

(3) The District and City specially stipulate and agree:

(a) The District may request the use of the Football Field and Track Area for athletic activities typically conducted in such areas during times when City has been granted use, by notifying City in writing not less than one week prior to the date the District desires to use such Football Field and Track Area for such activities. City shall use reasonable efforts to accommodate such requests.

(b) In addition, City shall accommodate the Principal's request to use the Football Field and Track Area up to 10 hours per Academic Year for athletic activities typically conducted in such areas during use periods granted to City, for special events provided that the City receives notice at least 30 days in advance of the special event date. In addition, Principal will schedule up to 60 hours per Academic Year for soccer and another 10 hours per Academic Year for other athletic uses outside of school hours.

(c) The District and the City acknowledge either party may override the use rights granted in this Agreement if required by the City, the Principal, or the District as a result of or due to any emergency, evacuation and/or any other similar unexpected event, activity and/or occurrence.

(d) The District and the City shall determine a mutually agreed upon period of rest for the Football Field and Track Area for a period of no less than fifteen (15) consecutive days during the Non-Academic Year in order to maintain the quality of the sod. The Principal and the City shall agree to a routine maintenance schedule for access to the property throughout the year, which may include access during school hours. Reasonable accommodations will be made to minimize disruptions.

(4) A group that has entered into a Memorandum of Understanding/Agreement with the City to provide recreational and/or athletic programs to the public shall constitute a City-sponsored group and shall be deemed to be the City of the purposes of this Agreement subject to approval by the District; which shall not be unreasonable withheld. Subject to the facility use agreement entered into with the City, such provider shall have the same rights to use the Football Field and Track Area under this Agreement as the City. The City shall accept full responsibility for such uses.

(5) City and the District each acknowledge that non-City sponsored groups may, from time to time, request the use of the Football Field and Track Area. Such groups may be permitted to use the Football Field and Track Area provided that: (a) such groups qualify, in the District's or its representative's sole discretion, to use the Football Field and Track Area under the District's policies governing use of Football Field and Track Area; (b) the District deems the proposed activity to be an appropriate use of the Football Field and Track Area; (c) the use does not interfere in any way with the conduct of school activities, including but not limited to, after-school athletic and other extracurricular activities of whatever nature of any DeKalb County School; (d) the use does not interfere in any way with the conduct of City's use or recreational activities; (e) the activity does not conflict with any previously scheduled activities of City or the District; (f) reasonable periods of rest are observed in order to maintain the quality of any sod located on any of the Football Field and Track Area, and (g) such non-City sponsored groups agree in writing to the following: (g.1.) provide supervisory and security personnel to properly maintain the order and discipline when the Football Field and Track Area are being used by such groups; (g.2.) vacate the Football Field and Track Area and remove refuse promptly after each practice, game or other activity thereon; (g.3.) if applicable, secure and lock the Football Field and Track Area upon the completion of each practice, game or other activity thereon; (g.4.) maintain the Football Field and Track Area during the period of use. When non-City sponsored groups request the use of the Football Field and Track Area during the times when City has the right to use the Football Field and Track Area, City will use reasonable efforts to accommodate such requests and will be responsible for scheduling such activities, and City will promptly notify the Principal of each such request and when those activities will occur. The Principal will coordinate such scheduling when non-City sponsored groups request to use the Football Field and Track Area during all times when City does not have the exclusive right to use the Football Field and Track Area. The principal shall use reasonable efforts to accommodate such request.

(6) City shall make reasonable efforts to (i) provide adequate supervisory and security personnel at each activity to properly maintain order and discipline when the Football Field and Track Area are being used by City; (ii) vacate the Football Field and Track Area and remove refuse promptly after each practice, game or other activity thereon; (iii) if applicable, secure and lock the Football Field and Track Area upon completion of each practice, game or other activity thereon; (iv)

return Football Field and Track Area to original condition prior to its use; (v) place trash cans and recycling bins on and around the Football Field and Track Area where Principal deems appropriate; and (vi) place portable restrooms when deemed necessary by the City on and around the Football Field and Track Area in designated locations where the Principal deems appropriate.

- iv) The District will have access to the Baseball Fields for five (5) hours per day during school hours (generally between 9:00 a.m. to 2:00 p.m.).
- v) The City and the District shall execute a permanent easement to jointly use/share the new parking lot and parking spaces (approximately 34 spaces) to be constructed by the Baseball Fields. After school hours, City may also use the parking lot and spaces located in front of the Peachtree Charter Middle School located adjacent to the Baseball Fields.
- vi) City shall also have the right to use all other District facilities in accordance with District policies.
- vii) At the conclusion of the 25 year term, the City and the District agree to negotiate in good faith on extending the facility use agreement.

c. PCMS Easements: BOE will grant City:

- i) a permanent easement on the BOE's Peachtree Charter Middle School property to use the existing fire lane for access to the Baseball Fields and the new parking lot to be constructed by the Baseball Fields (comprised of approximately 34 spaces);
- ii) a permanent easement to use the pedestrian walkway from the Baseball Fields to the parking lot located in front of Peachtree Charter Middle School;
- iii) a temporary construction easements required by City to construct the capital improvements upon; and
- iv) a temporary easement for the duration of this agreement to maintain the Football Field and Track Area.

d. At the New Austin Elementary School:

- i) The City and the District shall execute a permanent easement to jointly use/share the new parking lot and parking spaces (comprised of approximately 59 spaces) to be constructed at the New Austin Elementary School.
- ii) The City and the District shall execute a permanent easement to jointly use the other parking lots and spaces at the New Austin Elementary School after school hours.

- iii) The City and the District shall execute a permanent access easement at the north entry drive for the New Austin Elementary School for access to Dunwoody Park.
- iv) The City and the District shall execute a permanent access easement to use the District's drive to be located at the southern property line of the New Austin Elementary School for bus use only to access Dunwoody Park. The District will erect and maintain visible signage limiting the drive to bus use.
- v) The District will ensure the existing curb line along the south drive of the buffer property (between the curb and south property line) remains undisturbed.
- vi) The District will add and maintain evergreen vegetative screening to the buffer property behind the curb line as to provide sound reduction and visual screening to the neighboring parcels. Plans for such screening will be submitted as soon as practicable, but no later than December 31, 2018 to the City's arborist for review and approval; which shall not be unreasonably withheld. Installation of the vegetative screening shall be completed as soon as practicable but no later than the substantial completion of construction of the New Austin Elementary School.

4. At Closing, the BOE shall remit a cash payment in the amount of Three Million Six Hundred Thirty Two Thousand and 00/100ths Dollars (\$3,632,000.00) to the City in payment of the value exchanged (the "Cash Portion").

5. **Documents.** Between the Effective Date (defined in paragraph 12(g) herein below) and the Closing Date, the each party shall provide to the other party any and all third party documents pertaining to the properties to be purchased and sold within said party's possession, custody or control (the "Property Information"). Each party acknowledges that any Property Information provided by other party pursuant to this paragraph is provided without any representations or warranties as to the accuracy or contents thereof; and each party acknowledges and agrees that it shall not be entitled to rely upon any of such materials. Despite the provision of the Property Information pursuant to this paragraph, each party acknowledges it is solely responsible for ordering its own title insurance exam, commitment and policy, its own survey, soil reports, environmental reports, environmental assessments and any other inspections or reports desired by said party with respect the property being acquired by said party.

6. **Closing.** The closing of the purchase and sale of the Property (the "**Closing**") shall take place at the offices of BOE's counsel Nelson Mullins Scarborough & Riley, LLP, 201 17th Street, NW, Suite 1700, Atlanta, Georgia 30363 on or before 3:00 p.m. EST on or before January 20, 2017 (the "**Closing Date**"). Either party may elect to close in escrow. Each party shall be responsible for their own closing costs.

7. At Closing, City shall convey the City Property to BOE by Quitclaim Deed; BOE shall convey the Existing Austin E.S. Property and the PCMS Property to City at Closing by Quitclaim Deed, and BOE shall remit the Cash Portion of the Purchase Price to the City by wire transfer.

8. **Real Estate Taxes.** As both BOE and City are exempt from real estate taxes and assessments imposed by any governmental authority (“Taxes”) with respect to each Property, no taxes will be prorated at the Closing.

9. **Inspection Period.**

(a) Commencing on the Effective Date (as defined in Section 14(h) herein below) and continuing until December 30, 2016 (the “**Inspection Period**”), each BOE and BOE’s agents and designees shall have the right to enter the City Property at their sole risk and expense, and during reasonable hours, for the purposes of inspecting the City Property and making surveys, soil, environmental and mechanical and structural engineering studies, and any other investigations and inspections as BOE may reasonably require to assess the condition of the City Property. During the Inspection Period, the City and City’s agents and designees shall have the right to enter the Existing Austin E.S. Property and the PCMS Property at their sole risk and expense, and during reasonable hours, for the purposes of inspecting the Existing Austin E.S. Property and the PCMS Property and making surveys, soil, environmental and mechanical and structural engineering studies, and any other investigations and inspections as the City may reasonably require to assess the condition of the Austin E.S. Property and the PCMS Property.

(b) BOE shall not conduct a Phase II environmental site assessment or any other form of invasive testing or sampling on the City Property without the prior written consent of City, which consent shall not be unreasonably withheld. City shall not conduct a Phase II environmental site assessment or any other form of invasive testing or sampling on the Existing Austin E.S. Property or the PCMS Property without the prior written consent of BOE, which consent shall not be unreasonably withheld.

(c) BOE shall pay for all of the BOE’s due diligence work performed on the City Property and shall not permit the creation of any lien in favor of any contractor, subcontractor, materialman, mechanic, surveyor, architect or laborer. BOE shall promptly repair all damage to the City Property arising from any of its inspections or tests and shall restore the City Property to the substantially same condition existing immediately prior to such inspections and tests. BOE shall provide to City copies of any non-privileged third party reports if the sale does not close for any reason whatsoever.

(d) City shall pay for all of the City’s due diligence work performed on the Existing Austin E.S. Property and the PCMS Property and shall not permit the creation of any lien in favor of any contractor, subcontractor, materialman, mechanic, surveyor, architect or laborer. City shall promptly repair all damage to the Existing Austin E.S. Property and/or the PCMS Property arising from any of City’s inspections or tests and shall restore the Existing Austin E.S. Property and the PCMS Property to the substantially same condition existing immediately prior to such inspections and tests. City shall provide to the BOE copies of any non-privileged third party reports if the sale does not close for any reason whatsoever.

(e) The obligations of BOE under this Agreement shall be conditioned upon BOE satisfying itself, in its sole and absolute discretion, on or before the expiration of the Inspection Period that the City Property is in all respects satisfactory for BOE’s intended use. In

the event that BOE determines, in its sole discretion, for any reason or for no reason that it does not wish to purchase the City Property, BOE may terminate this Agreement by delivering to City a written notice of termination on or before the expiration of the Inspection Period, in which event this Agreement shall become null and void and the parties shall have no further obligation to one another except for those provisions that expressly survive the termination of this Agreement.

(f) The obligations of the City under this Agreement shall be conditioned upon City satisfying itself, in its sole and absolute discretion, on or before the expiration of the Inspection Period that the Existing Austin E.S. Property and the PCMS Property are in all respects satisfactory for City's intended use. In the event that City determines, in its sole discretion, for any reason or for no reason that it does not wish to purchase the Existing Austin E.S. Property and the PCMS Property, the City may terminate this Agreement by delivering to BOE a written notice of termination on or before the expiration of the Inspection Period, in which event this Agreement shall become null and void and the parties shall have no further obligation to one another except for those provisions that expressly survive the termination of this Agreement.

10. **Conditions to Closing.** The obligations of the parties to consummate the purchase and sale of the Properties on the Closing Date shall be subject to the satisfaction or performance of the following on or before the Closing Date:

(a) Approval of this transaction by the DeKalb County Board of Education by public vote as required by law.

(b) Approval of this transaction by the City of Dunwoody City Council by public vote as required by law.

(c) Approval of the City Property (to be acquired by BOE) for use as a public school facility by the Georgia Department of Education prior to the expiration of the Inspection Period.

If any of the conditions set forth above have not been satisfied or performed on or as of the Closing Date (as extended if applicable), either party shall have the right to terminate this Agreement by giving notice to the other party, in which event all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void, or (ii) extend the date of Closing for up to sixty (60) days in order to provide additional time for the conditions precedent to be met.

11. **Broker.** City and BOE each affirm to the other that neither has employed, retained nor consulted any broker, agent or finder in carrying on the negotiations in connection with this Agreement.

12. **Notices.** All notices, elections and communications permitted or required hereunder shall be in writing and shall be deemed given, received and effective for all purposes when delivered to the notice address for such recipient as set forth on the signature page to this Agreement, regardless of whether actually received. Notices may be given by email, courier, or

overnight delivery with tracking by FedEx or other similar nationally recognized overnight courier service, and notices may be given by counsel for the parties.

13. **Special Stipulations.** City and BOE specially stipulate and agree that upon the execution of this Agreement by BOE and City, each party shall terminate any and all discussions and negotiations with any other prospective buyer of the properties to be conveyed hereunder until this Agreement is terminated or consummated in accordance with the terms hereinabove.

14. **Miscellaneous.**

(a) *Binding Effect.* This Agreement shall be binding upon, enforceable against, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, which assignment must be approved by both parties in writing, consent not to be unreasonably withheld, delayed or conditioned.

(b) *Entire Agreement.* This Agreement supersedes all prior discussions and agreements between BOE and City with respect to the subject matter contained herein, and contains the sole and entire understanding between BOE and City with respect thereto.

(c) *Modification.* This Agreement shall not be modified or amended except by an instrument in writing executed by City and BOE.

(d) *Applicable Law.* This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

(e) *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

(f) *Time.* Time is and shall be of the essence of this Agreement.

(g) *Effective Date.* The effective date of this Agreement (the “**Effective Date**”) shall be later of the respective dates on which City or BOE approves the Agreement by public vote; and upon execution and delivery either party may enter the Effective Date upon the face page of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, City and BOE have caused this Purchase and Sale Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

CITY:

CITY OF DUNWOODY, GEORGIA,
A municipality of the State of Georgia

By: _____ (seal)

Print name: Denis Shortal, Mayor

Date: _____

Notice Address:

City of Dunwoody
41 Perimeter Center East/Suite 250
Dunwoody, GA 30346
Attn: City Manager

With a copy to:

Riley McLendon
315 Washington Ave., NE
Marietta, GA 30060
Attn: Cecil McLendon, Esq.
Telephone No.: 770.590.5900

Approved as to Form:

Cecil McLendon
City Attorney

Attest:

Sharon Lowery
City Clerk

[Signatures continued on following page]

BOE:

DEKALB COUNTY BOARD OF EDUCATION

a political subdivision of the State of Georgia

By: 

Dr. Melvin Johnson, Board Chair

Attest: 

Dr. R. Stephen Green, Superintendent

Notice Address:

Mr. Daniel E Drake, PE
Director of Planning and SPLOST Programming
DeKalb County School District
1780 Montreal Rd
Tucker, Georgia 30084
Email: daniel_e_drake@dekalbschoolsga.org
Phone: 678-676-1332
Fax: 678-676-1469

With a copy to:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attn: Cheryl V. Shaw, Esq.
Phone: 404.322.6139

EXHIBIT A

Legal Description of City Property
(10.28 +/- acres to be acquired by BOE)

Image below shows area to be acquired pending legal description

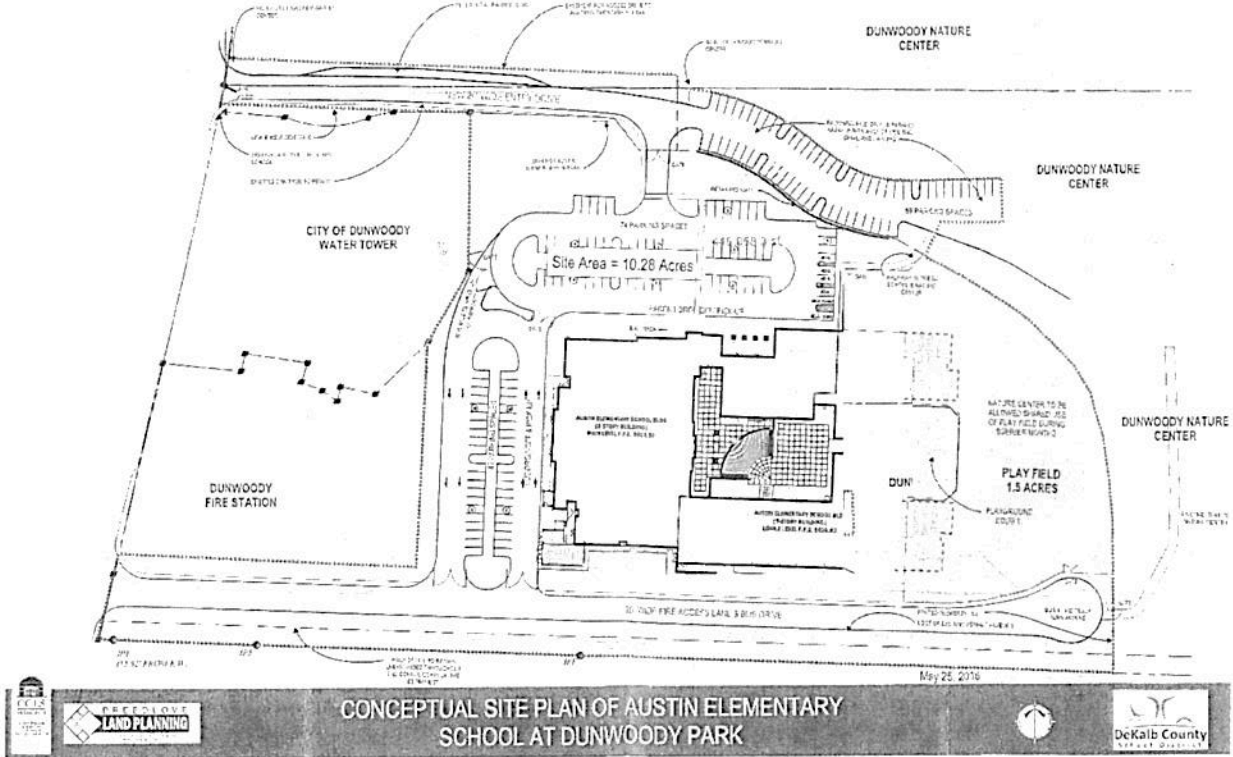


EXHIBIT B-1

Legal Description of Existing Austin E.S. Property
(9.8 +/- acres to be acquired by the City)

Image below shows area to be acquired pending legal description

