

**INDEPENDENT SCHOOL DISTRICT NO. 857
LEWISTON-ALTURA PUBLIC SCHOOLS
WINONA COUNTY**

**RESOLUTION APPROVING THE SALE OF THE PROPERTY LOCATED AT: 325 1ST
AVENUE, LEWISTON, MN**

WHEREAS, Independent School District No. 857, Lewiston-Altura Public Schools, Winona County, Minnesota (the “District”) is the owner of real property located at: 325 1st Avenue, Altura, Minnesota, legally described on the attached Exhibit A (the “Property”); and

WHEREAS, the District desires to sell the Property; and

WHEREAS, the City of Altura, a Minnesota municipal corporation, (the “Buyer”) has offered to purchase the Property from the District; and

WHEREAS, the District and the Buyer desire to enter into a Purchase Agreement, the form of which is attached hereto as Exhibit B (the “Purchase Agreement”) under which, among other things, the District will convey the Property to the Buyer for a sale price of \$67,500.00.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of Independent School District No. 857, Winona County, Minnesota as follows:

1. The recitals set forth herein are incorporated into and made a part hereof.
2. The proposed sale of the Property is hereby approved.
3. The Purchase Agreement is hereby approved.
4. Brein Maki, the Board Chair, and David Pringle, the Board Clerk, are hereby authorized and directed to execute all appropriate documents, including but not limited to a Purchase Agreement, to effectuate the conveyance of the Property to the Buyer; provided, however, that the District and the Buyer shall have met all conditions for conveyance of the Property set forth in the Purchase Agreement.
5. The Board Chair and Board Clerk, staff, and consultants are hereby authorized and directed to take any and all additional steps and actions necessary or convenient in order to accomplish the intent hereof.

Approved by the Board of Education of Independent School District No. 857, Winona County, Minnesota this _____ day of May, 2023.

INDEPENDENT SCHOOL DISTRICT NO. 857

WINONA COUNTY, MINNESOTA

By: _____
Brein Maki
Board Chair

Attest:

David Pringle
Board Clerk

EXHIBIT A
Legal Description of the Property
[to be inserted]

EXHIBIT B
Form of Purchase Agreement

PURCHASE AGREEMENT

1. PARTIES. This Purchase Agreement (this “Agreement”) is made on this ____ day of _____, 2023 (the “Effective Date”), by and between Independent School District No. 857, Lewiston-Altura Public Schools, a body corporate and politic in the State of Minnesota (the “Seller”) and the City of Altura, a Minnesota municipal corporation (the “Buyer”).

2. SUBJECT PROPERTY. The Seller is the owner of that certain real property consisting of a school building, parking lot, and field, located at 325 1st Avenue in Altura, Minnesota (PID No. 21.000.0110), legally described on Exhibit A (the “Property”).

3. OFFER/ACCEPTANCE. In consideration of the mutual agreements herein contained and other good and valuable consideration, the Buyer offers and agrees to purchase, and the Seller agrees to sell and hereby grants to the Buyer the exclusive right to purchase the Property and all buildings, improvements, and fixtures thereon, together with all appurtenances, including, but not limited to, plants, shrubs, trees, and grass.

4. PERSONAL PROPERTY. The Buyer acknowledges that Seller will be auctioning off items of personal property that are currently located on the Property prior to the Closing Date, and that the only items of personal property included in the sale of the Property are those items listed on Exhibit B attached hereto.

5. PURCHASE PRICE AND TERMS:

A. PURCHASE PRICE. The Buyer shall pay the Seller Sixty-Seven Thousand and Five Hundred Dollars (\$67,500) for the Property (the “Purchase Price”).

B. EARNEST MONEY. Upon execution of this Agreement by both parties, the Buyer shall deposit \$3,000 in earnest money (the “Earnest Money”) with the Seller, which may be placed in an interest-bearing account. The Earnest Money shall be applied towards the Purchase Price at Closing.

C. TERMS:

(1) BALANCE DUE SELLER. The Buyer agrees to pay the Purchase Price, less the Earnest Money to the Seller by certified or cashier’s check or by wire transfer at Closing.

(2) DEED/MARKETABLE TITLE. Subject to performance by the Buyer, the Seller agrees to execute and deliver a quit claim deed conveying marketable title to the Property to the Buyer, subject only to the following exceptions:

a. A restriction that:

The Buyer and any successors in interest are prohibited from using the Property as a public school, private school, or charter school, or any other school providing general education instruction for any students who are in kindergarten through twelfth grade.

The Buyer and any successors in interest are prohibited from using the Property for supervised care for children who are in kindergarten through twelfth grade during the hours of the Seller's standard school day, on days on which school is held by the Seller. Notwithstanding the above, the Buyer may use the Property for supervised care for children who are in kindergarten through twelfth grade outside the hours of the Seller's standard school day or on days in which school is not held by the Seller.

The Buyer and any successors in interest are prohibited from using the Property for early childhood programming, except with the written permission of the Grantor. For the purposes of this restriction, "Early Childhood Programming" is defined as programming or childcare for children from birth to those enrolled in kindergarten.

The above provision may be waived at Seller's sole discretion by Seller's governing board adopting and providing to Buyer, in a recordable form, a statement waiving the above restriction on Buyer's use of the Property under this provision.

- b. Building and zoning laws, ordinances, and state and federal regulations.
- c. Reservation of minerals or mineral rights to the State of Minnesota, if any.
- d. Title defects waived by the Buyer pursuant to Section 6 below.

6. CONTINGENCIES.

- A. Notwithstanding any other provision in this Agreement to the contrary, the parties agree that the purchase of the Property is subject to the following contingencies, which must be accepted or waived before the expiration of the Review Period hereafter defined, unless a shorter period is expressly provided herein:
 - (1) Title to the Property shall be acceptable to the Buyer;
 - (2) The Buyer shall have the right during the Review Period to conduct such tests, surveys, examinations, inspections, reviews, and other studies of the Property which the Buyer desires to conduct, at the Buyer's expense, as defined in Section 7;
 - (3) The Buyer shall have the right during the Review Period to seek any governmental or third-party approvals with respect to the Property that the Buyer believes may be necessary or suitable for the Buyer's intended use of the Property.
- B. During the Review Period as defined by Section 7, the Buyer may, by giving written notice to the Seller, either:
 - (1) Terminate this Agreement; or
 - (2) Waive any contingencies listed above and proceed to Closing.

If the Buyer elects to terminate this Agreement under paragraph (B)(1) of this Section, then, upon the Seller's receipt of the Buyer's written notice of termination, and provided the Buyer is not otherwise in default hereunder, the Earnest Money shall be refunded to the Buyer, and this Agreement shall be null and void and neither party shall have any further obligation to the other.

7. DUE DILIGENCE PERIOD. For a maximum of 30 calendar days after the mutual execution of this Agreement (the "Due Diligence Period"), the Buyer shall have the right, but not the obligation to conduct, at the Buyer's sole expense, any testing, investigation, or inspection, or may seek governmental or third-party approvals, with respect to the Property that the Buyer believes may be necessary or suitable for the Buyer's intended use of the Property. The Buyer may also conduct such tests, surveys, examinations, inspections, reviews, and other studies of the Property, including, without limitation, soil and engineering/structural investigations, appraisals, Phase I and/or Phase II environmental assessments including soil borings and any other environmental studies, without limitation, during the Due Diligence Period at Buyer's sole discretion. The Seller shall cooperate with the Buyer's inspections and consent to any approval applications provided, however, no such approvals shall take effect until Closing. The Seller hereby grants to the Buyer and its agents access to the Property at all reasonable times to permit the proper performance of the aforementioned inspections. Any portion of the Property damaged or altered as the result of any survey, inspection, or test performed by the Buyer, its agents, employees, or contractors must be returned to its original condition by the Buyer, at the Buyer's expense. The Buyer agrees to indemnify and defend the Seller against any liens, claims, losses, injuries, or damages directly attributable by the Buyer's exercise of its right to enter and work upon the Property. The Buyer agrees to provide the Seller with a copy of any report or survey prepared as a result of such surveying, inspection, examination, or testing, upon request by the Seller. The Buyer's obligations under this Section shall survive termination of this Agreement.

8. CLOSING DATE. The closing of the sale of the Property (the "Closing") shall take place on _____, 2023, or on such other date as mutually agreed upon by the parties. The Closing shall take place at the Seller's District Office, 100 County Road 25, Lewiston, Minnesota, or at such other location as mutually agreed upon by the parties.

9. DELIVERY OF DOCUMENTS. Within 10 business days of the Seller's execution of this Agreement, the Seller must provide to the Buyer copies of all materials in the Seller's possession, if any, relating to the Property, including but not limited to, title reports, abstracts of title, soil reports, environmental reports, surveys, building plans, agreements with governmental authorities, or other records of the Property that the Seller has in the Seller's possession, including all Service Contracts, if any, defined in Section 15 (J)(the "Due Diligence Documents"). In the event that the transaction contemplated by this Agreement does not close for any reason, the Buyer shall return all documents and copies of documents provided by the Seller hereunder to the Seller, and this obligation shall survive termination of this Agreement.

10. DOCUMENTS TO BE DELIVERED AT CLOSING. The Buyer and the Seller agree to deliver the following documents at or prior to Closing:

A. The Seller agrees to execute and deliver the following documents to the Buyer at Closing:

(1) A duly recordable quit claim deed conveying fee simple title to the Property to the Buyer free and clear of all encumbrances subject only to the restrictions and exceptions stated in Section 5 (C)(2)(a)-(d) of this Agreement.

- (2) Standard form Affidavit of Seller.
 - (3) Affidavit of the Seller confirming that the Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code.
 - (4) A completed Minnesota Well Disclosure Certificate or a statement that the Seller is not aware of any wells on the Property.
 - (5) The representations and warranties of the Seller contained in this Agreement must be true now and on the Closing Date as if made on the Closing Date, and the Seller shall have delivered to the Buyer at closing a certificate in a form acceptable to the Buyer, signed by an authorized representative of the Seller, certifying that such representations and warranties are true as of the Closing Date (the "Bring-Down Certificate").
 - (6) ALTA Statements or other form of Settlement Statement prepared by the Title Company.
 - (7) All keys to the Property.
 - (8) Authorizing resolutions or evidence of the Seller's authority and authorization to enter this transaction as may be required by the Title Company.
 - (9) Such other documents as may be reasonably required by the Title Company.
- B.** The Buyer agrees to execute and deliver the following documents to the Seller at Closing:
- (1) The balance of the Purchase Price, as adjusted for any earnest money pursuant to this Agreement.
 - (2) The Buyer shall, where applicable, join with the Seller in the execution and delivery of the closing documents and instruments as may be required by the Title Company.
 - (3) Authorizing resolutions or evidence of the Buyer's authority and authorization to enter this transaction as may be required by the Title Company.
 - (4) Such other documents as may be reasonably requested by the Title Company to evidence performance by Buyer of its obligations under this Agreement, if any.

11. CLOSING COSTS AND RELATED ITEMS. The Seller will pay: (a) any special assessments, pending or levied, prior to the Closing Date; (b) deed transfer taxes; (c) recording fees for all instruments required to establish marketable title in the name of the Seller; (d) one-half of the Closing fee charged by the Title Company. The Buyer will pay: (a) the costs of any reports for any surveys, testing, or inspections conducted by the Buyer of the Property; (b) the cost of the title commitment, title search, name searches, and exam fees; (c) the cost of recording or filing the deed transferring title to the Property; (d) fees associated with an updated survey of the Property, if any survey is ordered; (e) the cost of the title insurance premium and endorsements, if any; (f) one-half of the Closing fee charged by the Title Company. Each party shall be responsible for paying its own attorneys' fees.

12. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.

- A. The Seller shall be responsible for all real estate taxes, including any deferred real estate taxes, penalties, or interest, for the years prior to the year in which Closing occurs. Real estate taxes for the year of Closing shall be prorated between the Buyer and the Seller as of the Closing Date.
- B. The Seller shall pay all special assessments levied and constituting a lien against the Property as of the Closing Date, including, without limitation, special assessments certified for payment with the real estate taxes, any installments of special assessments, including interest payable with general real estate taxes in the year of Closing, and all deferred assessments. The Buyer shall also assume payment of any special assessments that are pending but not levied against the Property as of the Closing Date.

13. TITLE EXAMINATION. The Buyer shall, within a reasonable time after execution of this Agreement by both parties, obtain a commitment for title insurance from the Title Company or other evidence satisfactory to the Buyer (“Title Evidence”) for the Property. The Buyer shall have 15 business days after receipt of the Title Evidence to examine the same and to deliver written objections to title, if any, to the Seller. The Seller shall have until 15 calendar days following the expiration of the Due Diligence Period (or such later date as the parties may agree upon) to make title marketable, at the Seller’s expense. In the event that title to the Property cannot be made marketable or is not made marketable by the Seller by the expiration of the Due Diligence Period, then, at the option of the Buyer, the Buyer may terminate this Agreement in accordance with Section 6 (B)(1) of this Agreement and the Earnest Money shall be refunded to the Buyer.

14. “AS IS, WHERE IS.” The Buyer acknowledges that it has inspected or will have the opportunity to inspect the Property and agrees to accept the Property “AS IS” with no right of set off or reduction in the Purchase Price. The sale of the Property shall be without representation of warranties, express or implied, either oral or written, made by the Seller or any official, employee, or agent of the Seller with respect to the physical condition of the Property, including but not limited to, the existence or absence of petroleum, asbestos, hazardous substances, pollutants or contaminants in, on, or under, or affecting the Property or with respect to the compliance of the Property or its operation with any laws, ordinances, or regulations of any government or other body, except as stated above. The Buyer acknowledges and agrees that the Seller has not made and does not make any representations, warranties, or covenants of any kind or character whatsoever, whether expressed or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant ability, past or present use, development, investment potential, tax ramifications or consequences, present or future zoning, habitability, merchantability, fitness or suitability for any purpose, all of which warranties the Seller hereby expressly disclaims, except as stated above. Except for the Seller’s express representations and warranties contained in this Agreement, all other warranties, either express or implied, of the physical condition (including environmental condition) of the Property are void. The Buyer acknowledges that it and its representatives have or before Closing will have fully inspected the Property or will be provided with an adequate opportunity to do so, are or will be fully familiar with the condition thereof.

15. REPRESENTATIONS AND WARRANTIES BY THE SELLER. The Seller hereby represents and warrants to the Buyer as of the Closing Date that:

- A. Authority. The Seller is a public school district and political subdivision of the state of Minnesota; The person signing this Agreement and the Seller's closing documents on behalf of the Seller is authorized to do so.
- B. Legal Proceedings. There is no action, litigation, investigation, condemnation or proceeding of any kind pending or, to the best of the Seller's knowledge without investigation, threatened against the Seller related to the Property or any portion of the Property, and the Seller has no actual knowledge that any such action is contemplated.
- C. Bankruptcy. No action or proceeding shall have been commenced by or against the Seller under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors, and no attachment, execution, lien, or levy shall have attached to or been issued with respect to the Seller's interest in all or a portion of the Property.
- D. Wells. There are no wells located on the Property.
- E. Individual Sewage Treatment Systems. There are no individual sewage treatment systems located on the Property.
- F. Methamphetamine Production. To the best of the Seller's knowledge, methamphetamine production has not occurred on the Property.
- G. Foreign Status. The Seller is not a "foreign person" as such term is defined in the Internal Revenue Code.
- H. Eminent Domain. To the best knowledge of the Seller, there is no existing or proposed or threatened eminent domain or similar proceeding, or private purchase in lieu of such a proceeding which would affect the Property in any material way.
- I. Rights of Others to Purchase Property. The Seller has not entered any other contracts for the sale of the Property, nor are there any rights of first refusal or options to purchase the Property or any other rights of others that might prevent the consummation of this Agreement.
- J. Service Contracts. The Seller has not entered into any service, maintenance, supply, leasing, brokerage, and listing and/or other contracts relating to the Property (along with all amendments and modifications thereof, the "Service Contracts") which will be binding upon the Buyer after the Closing.
- L. Underground Storage Tanks. The Seller knows no underground storage tanks located on the Property.

The provisions of this Section shall survive Closing. The representations and warranties contained in this Section shall be true and correct on the Effective Date and the Closing Date. The Seller shall indemnify and hold the Buyer harmless from any damages sustained by the Buyer that were caused by the Seller's material breach of any of the above representations and warranties, but only if the claim for indemnification is made within six months after the Closing Date.

16. REPRESENTATIONS AND WARRANTIES OF THE BUYER. The Buyer represents and warrants to the Seller as follows:

- A. Organization and Authority. Buyer represents and warrants to Seller that Buyer is a Minnesota municipal corporation, duly created under and subject to the laws of the State of Minnesota. Buyer has full power and authority to execute, deliver and perform under this Agreement and under the Closing Documents, and no third-party consent is required for Buyer to enter into and perform under this Agreement. The execution, delivery and performance of this Agreement and the Closing Documents have not and shall not constitute a breach or default under any other agreement, law or court order under which Buyer is a party or may be bound. This Agreement is a valid and binding obligation of Buyer and is enforceable in accordance with its terms.
- B. Consents. As of the Closing Date, the Buyer will have obtained all consents and approvals required to consummate the transactions contemplated in this Agreement.
- C. Indemnification for the Buyer's Investigation. The Buyer shall promptly pay when due any and all charges related to the Buyer's inspections, investigations, and testing of the Property.
- D. Legal Actions. There are no actions or proceedings pending or, to Buyer's actual knowledge, threatened against Buyer affecting Buyer's ability to perform any its obligations under this Agreement or the Closing Documents.

The representations and warranties contained in this Section shall survive Closing and shall be true and correct on the Effective Date and the Closing Date. The Buyer shall indemnify, defend, and hold the Seller harmless from any damages sustained by the Seller that were caused by the Buyer's material breach of any of the above representations and warranties, but only if the claim for indemnification is made within six months from the Closing Date.

17. REMEDY. In the event that any of the Seller's representations, warranties or covenants set forth in this Agreement are not true and correct as of the Closing Date, the Buyer may, in addition to its other remedies, elect to close under this Agreement notwithstanding the failure of such representation or warranty.

18. CONDEMNATION. If, prior to the Closing, eminent domain proceedings are commenced against all or any part of the Property by the federal government, the Seller shall immediately give notice to the Buyer of such fact and at the Buyer's option (to be exercised within 15 calendar days after the Seller's notice), this Agreement may be terminated, in which event neither party will have further obligations under this Agreement. In that event, any Earnest Money paid by the Buyer shall be returned to the Buyer. If the Buyer fails to give such notice, then there shall be no reduction in the Purchase Price, and the Seller shall assign to the Buyer at the Closing all of the Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings. Prior to the Closing Date, the Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without the Buyer's prior written consent.

19. BROKER COMMISSIONS. The Seller and the Buyer represent and warrant to each other that they have not dealt with any brokers, finders, or the like in connection with the transaction contemplated by this Purchase Agreement. The Seller and the Buyer each hereby agree to indemnify and hold the other

harmless from and against all liability, loss, cost, damage, or expense (including, but not limited to, reasonable attorneys' fees and costs of litigation) which the other party shall suffer or incur because of any claim by a broker, agent, or finder claiming by, through, or under such indemnifying party for any compensation with respect to the entering into of this Agreement, the sale and purchase of the Property, or the consummation of the transactions contemplated herein. The foregoing indemnification shall survive Closing.

20. REMEDIES. If the Buyer or the Seller defaults on any of the agreements herein, the non-defaulting party may (i) terminate this Agreement, or (ii) seek specific performance of this Agreement, provided that any action for specific enforcement must be brought within six months after the date of the alleged breach. In the event of a default of this Agreement by the Seller, any Earnest Money paid by the Buyer shall be returned to the Buyer. In the event of a default of this Agreement by the Buyer, the Seller shall retain the Earnest Money.

21. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which will be an original, but such counterparts together will constitute one and the same instrument.

22. AMENDMENT AND MODIFICATION. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or have any effect unless made in writing, is signed by the party to be bound and specifies with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by either party of any default by the other party shall not affect or impair any right arising from any previous or subsequent default.

23. NOTICES. Any notice, demand, request, or other communication which may or shall be given or served by the Seller on the Buyer or by the Buyer on the Seller, shall be deemed as given or served on the date the same is hand delivered or the date of receipt or the date of delivery if deposited in the United States mail, registered or certified, postage prepaid, and addressed as follows:

If to the Seller:	Independent School District No. 857 Attn: Superintendent 100 County Road 25 Lewiston, MN 55952
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With a copy to:	Kennedy & Graven, Chartered Attn: Sarah J. Sonsalla 150 South 5th Street, Suite 700 Minneapolis, MN 55402
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If to the Buyer:	City of Altura Attn: City Clerk 25 North Main St. Altura, MN 55910
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or such other address as either party may give to another party in accordance with this Section.

24. NO PARTNERSHIP OR JOINT VENTURE. Nothing in this Agreement shall be construed or interpreted as creating a partnership or joint venture between the Seller and the Buyer relative to the Property.

25. SEVERABILITY. If any provision of this Agreement is held to be unenforceable or void by a court of competent jurisdiction, such provision shall be deemed severable and shall not affect the validity of the remaining terms of this Agreement.

26. CUMULATIVE RIGHTS. Except as may otherwise be provided herein, no right or remedy herein conferred on or reserved by either party is intended to be exclusive of any other right or remedy provided by law, but such rights and remedies shall be cumulative in and in addition to every other right or remedy given herein or elsewhere or existing at law, equity or by statute.

27. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and no other agreement prior to this Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. This Agreement shall supersede all previous agreements and understandings, either or oral or written between the parties with respect to the Property.

28. BINDING EFFECT. This Agreement binds and benefits the parties and their successors and assigns.

29. CONTROLLING LAW. This Agreement has been made under the substantive laws of the State of Minnesota, and such laws shall control its interpretation.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date written above.

SELLER

**INDEPENDENT SCHOOL
DISTRICT NO. 857**

By: _____

Brein Maki

Its: Board Chair

By: _____

David Pringle

Its: Board Clerk

BUYER

CITY OF ALTURA

By: _____

John D. Mask

Its: Mayor

By: _____

Its: _____

EXHIBIT A

Legal Description of the Property

[to be added]

EXHIBIT B

Items of Personal Property Included in this Transaction

[to be added]