

ORDINANCE O-5-17

AN ORDINANCE OF THE CITY OF MCGREGOR, TEXAS AUTHORIZING THE SALE OF APPROXIMATELY TEN ACRES OF LAND OUT OF THE DEFENSE ECONOMIC READJUSTMENT ZONE OF THE CITY OF MCGREGOR TO HEART OF TEXAS ELECTRIC COOPERATIVE, INC. AND FINDING THAT SAID SALE ACHIEVES THE PUBLIC PURPOSES OF ENHANCING JOB CREATION, INCREASING ECONOMIC ACTIVITY AND ENHANCING THE TAX BASE OF THE CITY OF MCGREGOR

WHEREAS, the City Council of the City of McGregor, Texas desires to sell approximately ten acres of land which was formerly a part of the Naval Weapons Industrial Reserve Plant which has been designated as a Defense Economic Readjustment Zone; and

WHEREAS, the City Council of the City of McGregor finds that the sale of such land to Heart of Texas Electric Cooperative, Inc. will achieve the public purposes of enhancing job creation, increasing economic development and enhancing the tax base of the City of McGregor;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of McGregor, Texas as follows:

**Section 1.** The City Council of the City of McGregor hereby approves the sale of a tract of approximately ten acres of land out of the City's Defense Economic Readjustment Zone to Heart of Texas Electric Cooperative, Inc. under the terms and conditions set forth in the Contract for Sale attached hereto and incorporated herein as **Exhibit A**. The Council further authorizes the City Manager of the City of McGregor to execute the attached Contract and all other documents necessary to complete the sale.

**Section 2.** The City Council of the City of McGregor further finds that the subject property is contained within a Defense Economic Readjustment Zone and that the sale of this property will achieve the public purposes of enhancing job creation, increasing economic development and enhancing the tax base of the City of McGregor, Texas.

PASSED on this the 17<sup>th</sup> day of APRIL, 2017.



ATTEST:

*Angelina Joan*  
City Secretary

CITY OF MCGREGOR, TEXAS

By: \_\_\_\_\_

*Jim Hering*  
Jim Hering, Mayor

## CONTRACT FOR SALE

**THIS CONTRACT FOR SALE** is made by and between **THE CITY OF MCGREGOR, TEXAS**, hereinafter referred to as "Seller", and **HEART OF TEXAS ELECTRIC COOPERATIVE, INC.**, P. O. Box 357, McGregor, Texas 76657-0357, hereinafter referred to as "Buyer", upon the terms, provisions and conditions set forth herein.

1. **PURCHASE AND SALE.** Subject to the terms, reservations, easements, covenants, conditions and disclaimers set forth herein, Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Subject Property which is a tract of approximately ten (10) acres situated in McLennan County, Texas ("Subject Property") as described on **Exhibit 1**. The Subject Property will be surveyed at Buyer's expense prior to closing and the property description from the survey will be used in the deed to the Subject Property.

See **Exhibit 1** for description of Subject Property.

2. **RESERVATION.** Seller reserves all of the oil, gas and other minerals in and under the Subject Property.

3. **CONTRACT SALES PRICE.** The Sales Price of Eighty Thousand and No/100 Dollars (\$80,000.00) shall be paid in cash by Buyer to Seller at Closing.

4. **EARNEST MONEY.** Upon execution of this Contract for Sale by the Buyer, an earnest money check in the amount of \$500.00 shall be deposited with Home Abstract & Title Company ("Title Company"), which Earnest Money shall be held in escrow in accordance with the provisions of this Contract. The Earnest Money is deposited with Title Company as Escrow Agent with the understanding that the Escrow Agent (i) does not assume or have any liability for performance or non-performance of any party, (ii) has the right to require the receipt, release and authorization in writing of all parties before paying the Earnest Money deposit to any party, and, (iii) is not liable for interest or other charges on the funds held.

5. **SURVEY AND TITLE BINDER.**

A. **Survey.** Buyer will deliver or cause to be delivered to Buyer and Title Company a copy of a current-on-the-ground survey ("Survey") of the Subject Property made by a duly licensed surveyor, in a form acceptable to Buyer and Title Company and shall have a plat including the entirety of the Property prepared. Buyer and Seller shall each pay one-half of the cost of the Survey and plat. Seller will provide, at Seller's expense, an owner's policy of title insurance.

B. Within forty-five (45) days after the date of this Contract or as soon thereafter as the Title Binder is prepared, Seller shall, at Buyer's expense, provide to Buyer:

(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.

6. **APPROVAL PERIOD AND TITLE.**

A. Buyer shall have ten (10) business days after the receipt of the Survey and delivery of a Title Binder, 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 made by Buyer, Seller shall have twenty-one (21) days to cure same. If 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 obtain its earnest money.

B. (1) At the Closing, Seller shall convey to Buyer title by Special Warranty Deed subject to the reservations, covenants, restrictions, disclaimers, easements, obligations and leases described herein and to any reservations, obligations, easements, restrictions or covenants that are on record and applicable to the Subject Property, and any other reservations, obligations, easements, discrepancies in boundaries, encroachments, restrictions or exceptions previously approved by Buyer in accordance with Paragraph 6.A., and free and clear of any liens or debts. Specifically, this sale is subject to all easements, obligations, use restrictions, covenants, reservations, notices, warnings and other terms and conditions as set forth in the Quitclaim Deed conveying the Subject Property to the Seller that were executed by the United States of America, acting by and through the Department of the Navy to the City of McGregor. This deed is attached hereto and marked as **Exhibit 2**. It shall be referred to as the "Navy Deed." All easements, obligations, use restrictions, covenants, reservations and other terms and conditions set forth in the Navy Deed is specifically adopted herein for all purposes and shall be adopted in and be a part of the Special Warranty Deed to be executed by Seller to Buyer pursuant to this Contract of Sale. All easements, use restrictions, covenants, reservations and other terms and conditions set forth in the Navy Deed shall run with the land in perpetuity until they are released or expire as provided in the Navy Deed. Buyer expressly agrees that it does and will assume all of the obligations imposed on the City of McGregor by the provisions of the Navy Deed with respect to the Subject Property. This sale is subject to the reservations of easement set out in the Navy Deed.

Buyer further acknowledges that this sale is and will be subject to the reservation of right of access and the use restrictions found in the Navy Deed as well as to the non-interference covenant, order/permit compliance covenant and non-discrimination covenant set forth in the Navy Deed. Buyer also acknowledges that attached to the Navy Deed is a "Findings of Suitability to Transfer" that sets forth the basis for the United States of America/Department of the Navy's determination that the Subject Property is environmentally suitable for transfer for industrial and commercial purposes. Buyer acknowledges that it is aware of the information contained in such Findings of Suitability to Transfer. Buyer also acknowledges that it has received and reviewed the Environmental Baseline Survey to Transfer, NWIRP McGregor, McGregor, Texas.

(2) THE SUBJECT PROPERTY WILL BE SOLD AND IS SOLD "AS IS," "WHERE IS," AND "WITH ALL FAULTS." SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED AS TO THE QUALITY OF THE SUBJECT PROPERTY, THE CHARACTERISTICS OF THE SUBJECT PROPERTY, THE SUITABILITY OF THE SUBJECT PROPERTY FOR THE BUYER'S PARTICULAR PURPOSE, OR THE MERCHANTABILITY OF THE SUBJECT PROPERTY. ALL WARRANTIES, EXPRESS OR IMPLIED, ARE DISCLAIMED. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SUBJECT PROPERTY IS FREE FROM DEFECTS OR HAZARDOUS CONDITIONS/MATERIALS, OR THAT THE SUBJECT PROPERTY WILL BE OF A PARTICULAR RESALE VALUE. BUYER ACKNOWLEDGES THAT, PRIOR TO THE SUBJECT PROPERTY BEING CONVEYED TO THE SELLER, THE SUBJECT PROPERTY WAS USED AS A PART OF A NAVAL WEAPONS PRODUCTION FACILITY AND WAS OWNED BY THE UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY. BUYER ACKNOWLEDGES AND AGREES THAT ADVERSE CONDITIONS, ENVIRONMENTAL OR OTHERWISE, MAY EXIST ON THE SUBJECT PROPERTY THAT WERE CREATED DURING THE TIME OF THE USE OF THE SUBJECT PROPERTY AS A NAVAL WEAPONS PRODUCTION FACILITY AND THAT BUYER PURCHASES AND ACCEPTS THE SUBJECT PROPERTY WITH KNOWLEDGE OF THIS FACT AND ACCEPTS THE PROPERTY SUBJECT TO ANY CONDITIONS, ENVIRONMENTAL OR OTHERWISE, THAT MAY EXIST AND DO EXIST ON THE SUBJECT PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT IT HAS RELIED UPON ITS OWN INVESTIGATION, INSPECTIONS, AND KNOWLEDGE OF THE SUBJECT PROPERTY IN MAKING ITS DETERMINATION TO PURCHASE THE SUBJECT PROPERTY AND THAT THE SELLER HAS MADE NO REPRESENTATION TO BUYER REGARDING QUALITY, CHARACTERISTICS, SUITABILITY, MERCHANTABILITY OR CONDITION OF THE SUBJECT PROPERTY. BUYER IS AWARE OF THE POSSIBLE EXISTENCE OF HAZARDOUS MATERIALS IN, ON OR UNDER THE SUBJECT PROPERTY AND AGREES TO BUY AND ACCEPT THE SUBJECT PROPERTY WITH SUCH KNOWLEDGE.

(3) BUYER, OR ANYONE CLAIMING BY, THROUGH OR UNDER BUYER, FULLY RELEASES THE SELLER, ITS REPRESENTATIVES AND AGENTS, FROM ANY AND ALL CLAIMS THAT BUYER MAY HAVE OR HEREAFTER ACQUIRE AGAINST SELLER, ITS REPRESENTATIVES OR AGENTS, FOR ANY LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, OR CAUSE OF ACTION ARISING FROM OR RELATING TO ANY CONDITION OF OR AFFECTING THE SUBJECT PROPERTY. THIS COVENANT RELEASING THE SELLER SHALL BE A COVENANT RUNNING WITH THE SUBJECT PROPERTY AND SHALL BE BINDING UPON BUYER AND ITS ASSIGNS.

(4) Buyer acknowledges that any adverse environmental condition or contamination on the Subject Property at the time the same is sold from Seller to Buyer exists as a result of the actions of the United States of America or its contractors prior to the time of conveyance of the Subject Property to Seller. Buyer acknowledges that the use of the Subject Property is and shall be limited to industrial and commercial uses only subject to restrictions placed upon the Subject Property in the Navy Deed. Buyer agrees to abide by the conditions, restrictions,

and prohibitions contained within the Navy Deed after the Closing.

7. **CLOSING.**

A. The Closing of the sale ("Closing Date") shall be on or before sixty (60) days from the execution 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 a Special Warranty Deed conveying the Property containing reservations, disclaimers, releases, conditions and exceptions set forth herein.

C. At the Closing, Buyer shall make payment of the Sales Price to Seller.

D. The Subject Property is not subject to ad valorem taxation before the closing of this sale. After closing, Buyer shall be responsible for any ad valorem taxes assessed on the Subject Property.

8. **DEFAULT.** If Buyer fails to comply herewith, Seller may either (i) enforce specific performance hereof, or (ii) terminate this contract. 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.

9. **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.

10. **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, understandings, representations or warranties which are not expressly set forth herein.

11. **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. This contract cannot be assigned by either party without the written consent of the other party.

12. **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.

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

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

15. **SPECIAL PROVISIONS.**

A. Right of First Refusal (Unimproved Property) – If, at any time after Closing, HEART OF TEXAS ELECTRIC COOPERATIVE, INC. (“HOTEC”) desires to sell the Subject Property, or any part thereof, and the property that HOTEC desires to sell has not been improved with any permanent structure, the CITY OF MCGREGOR, TEXAS (“City of McGregor”) shall have the right of first refusal to repurchase the Subject Property. In the event HOTEC desires to sell such property, HOTEC shall give written notice of such fact to the City of McGregor by certified mail and offer to sell such property to the City of McGregor at the same price per acre as HOTEC is paying under this contract to purchase the property from the City of McGregor. Within forty-five (45) days of receipt of such notice, the City of McGregor shall, by certified mail, notify HOTEC of its intent to repurchase or not repurchase such property. In the event the City of McGregor advises HOTEC that it intends to purchase the property, HOTEC must sell the property to the City of McGregor. In such event, HOTEC will convey good and marketable fee simple title by Special Warranty Deed to the City of McGregor free and clear of liens. Such sale shall close within forty-five (45) days of the City of McGregor’s notification to HOTEC of its intent to re-purchase the property.

In the event the City of McGregor does not respond to HOTEC’s notice of intent to sell within thirty (30) days of receiving such notice, the City of McGregor shall be deemed to have waived its right of first refusal and HOTEC may sell the property to whomever it wishes.

B. Right of First Refusal (Improved Property) – If, at any time after Closing, HOTEC desires to sell the Subject Property, or any part thereof, and HOTEC has constructed a permanent structure or improvement on the Subject Property, the City of McGregor shall have the right of first refusal to repurchase the Subject Property with such improvement. In the event HOTEC desires to sell such property, HOTEC shall give written notice of such fact to the City of McGregor by certified mail. Within forty-five (45) days of receipt of such notice, the City of McGregor shall notify HOTEC of its interest in repurchasing the property. If the City of McGregor notifies HOTEC of its interest in repurchasing, the parties shall confer to determine if an agreed purchase price can be reached. If an agreed price cannot be reached within thirty (30) days after the City of McGregor has notified HOTEC of its interest in repurchasing the Property, the parties shall each appoint an appraiser and the two appraisers will appoint a third appraiser for the purpose of determining the fair market value of the property, including improvements. Within fourteen (14) days after the two appraisers are appointed, they shall select a third appraiser and the three appraisers (“the appraisal team”), by majority vote if necessary, shall advise HOTEC and The City of McGregor of their determination as to the fair market value of the property. Upon receiving notification from the appraisal team of their determination of fair market value, the City of McGregor shall, by certified mail, notify the HOTEC of its intent to repurchase or not repurchase the property at that price. In the event the City of McGregor advises HOTEC that it intends to repurchase the property for the value as determined by the appraisers, HOTEC must sell the property to the City of McGregor for that amount. In such event, HOTEC will convey good and marketable fee simple title by Special Warranty Deed to the City of McGregor free and clear of

liens. Such sale shall close within forty-five (45) days of the City of McGregor's notification to HOTEK of its intent to repurchase the property.

In the event the City of McGregor does not notify HOTEK of its intent to repurchase or not repurchase the property within thirty (30) days of receiving the appraisal team's determination of fair market value, the City of McGregor shall be deemed to have waived its right of first refusal and HOTEK may sell the property to whomever it wishes.

The right of first refusal will be documented in the Special Warranty Deed from Seller to Buyer.

C. If the plat of the Property is not approved by the City of McGregor before Closing, the Buyer agrees to take all actions necessary to secure approval of the plat after Closing. Seller agrees to waive all platting fees,

*[signature pages follow]*

EXECUTED by Seller on this the 17<sup>th</sup> day of APRIL, 2017.

SELLER:

CITY OF MCGREGOR, TEXAS

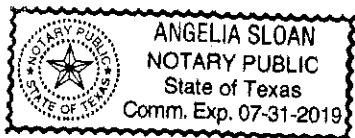
By: [Signature]  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: City Hall  
302 South Madison  
McGregor, TX 76657

THE STATE OF TEXAS §  
COUNTY OF McLENNAN §

BEFORE ME, the undersigned authority, on this day personally appeared James S. Hering, Mayor of the CITY OF MCGREGOR, TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he understood the same and executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND and seal of office this the 17<sup>th</sup> day of APRIL, 2017.



Angelia Sloan  
NOTARY PUBLIC, STATE OF TEXAS