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LAND EXCHANGE AGREEMENT

**BY AND BETWEEN THE CITY OF CORPUS CHRISTI, A POLITICAL SUBDIVISION
OF THE STATE OF TEXAS**

AND

**THE UNITED STATES OF AMERICA AND ITS ASSIGNS, ACTING BY AND
THROUGH THE DEPARTMENT OF THE NAVY**

THIS LAND EXCHANGE AGREEMENT ("**Agreement**") is made and entered into as of this ____ day of _____, 2019, by and between the CITY OF CORPUS CHRISTI, a political subdivision of the State of Texas ("CITY") and the UNITED STATES OF AMERICA and its assigns, acting by and through the Department of the Navy (the "GOVERNMENT" or "DEPARTMENT OF THE NAVY" or "NAVY"). They are together referred to herein as the "PARTIES."

RECITALS

WHEREAS the United States Congress has authorized the Secretary of the Navy the authority to convey certain real property to the CITY in exchange for real property interests either adjacent or proximate, and causing an encroachment concern, as determined by the Secretary of the Navy, to Naval Air Station Corpus Christi, Naval Outlying Landing Field Waldron, and Naval Outlying Field Cabaniss pursuant to certain terms and conditions more fully set forth in Section 2845 of Public Law No. 115-91, the National Defense Authorization Act for Fiscal Year 2018, signed by the President of the United States on December 12, 2017 ("**Legislation**"), **Exhibit A**, attached hereto and incorporated by reference; and

WHEREAS the GOVERNMENT is fee owner of all of that certain parcel of real property in Nueces County, Texas known as Peary Place Transmitter Site, associated with Naval Air Station Corpus Christi, Texas, consisting of approximately 44 acres more or less together with improvements thereon, as depicted on **Exhibit B** attached hereto and incorporated herein by this reference to this **Agreement** ("**Navy Property**"); and

WHEREAS the CITY is the owner of that certain real property interests, to include in approximately _____ acres, more or less, either adjacent or proximate, and causing an encroachment concern, to Naval Air Station Corpus Christi, Naval Outlying Landing Field Waldron, and Naval Outlying Field Cabaniss in Nueces County, Texas, as depicted on **Exhibit C** attached hereto and incorporated herein by this reference to this **Agreement** ("**City Property**"); and

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WHEREAS the **Navy Property** and the **City Property** shall sometimes be hereinafter collectively referred to as the "**Properties**" and individually referred to as a "**Property**;" and

WHEREAS the CITY desires to acquire from the GOVERNMENT and the GOVERNMENT desires to convey to the CITY the **Navy Property**. The **Navy Property** comprises approximately 44 acres located in Nueces County, Texas and is currently used as a recreational field. It contains two CONEX boxes. **Navy Property** has water, electrical and communication utilities in place; and

WHEREAS, the GOVERNMENT desires to acquire from the CITY, and the CITY desires to convey to the GOVERNMENT, the **City Property**, which includes approximately _____ acres, more or less, either adjacent or proximate, and causing an encroachment concern, to Naval Air Station Corpus Christi, Naval Outlying Landing Field Waldron, and Naval Outlying Field Cabaniss in Nueces County, Texas; and

WHEREAS, a condition of the GOVERNMENT's authorization to convey the **Navy Property**, as is, to the CITY pursuant to the **Legislation** is the conveyance by the CITY to the GOVERNMENT of **City Property**; and

WHEREAS, pursuant to the requirement of Section 2845(f) of the **Legislation**, the CITY is required to pay the costs to be incurred by the Department of the Navy to carry out the exchange of property interests, including those costs related to land survey, environmental documentation, real estate due diligence such as appraisals, and any other administrative costs related to the exchange of property interests to include costs incurred preparing and executing the land exchange agreement authorized under Section 2845(c); and

WHEREAS, the CITY is authorized to enter into land exchange agreements pursuant to Texas Local Government Code Section 272.001 , Texas Statutes, and the Corpus Christi City Council approved this Agreement **at a duly noticed public meeting held on September _____, 2019**; and

WHEREAS, the GOVERNMENT and the CITY desire to enter into this Agreement.

NOW THEREFORE, the GOVERNMENT and the CITY agree, subject to the required authorizations and appropriations, to the following:

1. **PURPOSE**. The purpose of this **Agreement** is to memorialize the **Parties'** understanding and intent regarding the exchange of parcels of real property as depicted on **Exhibit B and Exhibit C**.
2. **RECITALS A PART HEREOF**. The Recitals set forth above shall be deemed a part of this **Agreement** and are incorporated herein by reference.

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3. **EXCHANGE**. Subject to compliance with the terms and conditions of this **Agreement** and the authorizing Legislation, the following properties shall be exchanged as follows:

3.1 **Navy Property**. As fair and reasonable consideration for the **City Property**, GOVERNMENT shall convey to the CITY and the CITY shall acquire from the GOVERNMENT the **Navy Property**.

3.2 **City Property**. As fair and reasonable consideration for the **Navy Property**, the CITY shall convey to the GOVERNMENT and the GOVERNMENT shall acquire from the CITY certain real property interests, to include in approximately _____ acres, more or less, either adjacent or proximate, and causing an encroachment concern, to Naval Air Station Corpus Christi, Naval Outlying Landing Field Waldron, and Naval Outlying Field Cabaniss in Nueces County, Texas, together with payment to the GOVERNMENT of additional consideration, if any, and reimbursements as further discussed in section 9 of this **Agreement**. The City will be responsible for ensuring compliance with Texas Local Government Code Section 272.001 .

4. **EVIDENCE OF TITLE**. As evidence of title, each Party shall obtain its own Title Commitment for Owners Policy of Title Insurance (“**Title Commitment**”) for the Property it will receive from the other. Each Title Commitment shall be accompanied by copies of all recorded documents affecting the Property described in the Title Commitment. The CITY and the GOVERNMENT agree to work together in good faith to cause the condition of title to the **Navy Property** to be reasonably satisfactory to the CITY and to cause the condition of title to the **City Property** to be reasonably acceptable to the GOVERNMENT. The CITY acknowledges that title examination of the **City Property** will be conducted by the GOVERNMENT in accordance with the *Department of Justice Title Standards of 2016* (“**DOJ Standards**”). Both Parties agree to jointly develop instructions and procedures to complete the closings on the land exchange.

5. **LAND SURVEYS AND LEGAL DESCRIPTIONS**. The CITY shall obtain current land surveys of each of the Properties (“**Surveys**”), which Surveys shall include the exact acreage and legal description of each of the Properties. The surveys shall meet the requirements of the United States. Specifically:

5.1 The land survey shall be performed according to the Minimum Requirements as set forth by the **INSERT TEXAS REQUIREMENT**.

5.2 The survey shall be submitted to the GOVERNMENT for review and acceptance. The Parties shall allow for a two-week GOVERNMENT review period. Any comments from GOVERNMENT’s review shall be addressed with revised submittal within a two-week period.

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5.3 Required submittals shall be two signed/sealed full scale hard copies of the survey plat, legal description and surveyor report, an electronic PDF of the same and an AutoCAD.dwg (2010 version) prepared in accordance with the National CAD Standards (NAVFAC AutoCAD template file to be provided). Any supporting documentation from title commitment exceptions and fiduciary records research by survey contractor shall be part of the review submittal.

5.4 The cost of the Surveys shall be borne by the CITY. The Surveys shall be delivered by the CITY to the GOVERNMENT.

6. ENVIRONMENTAL MATTERS. GOVERNMENT and the CITY agree as follows with respect to environmental matters pertaining to the Properties:

6.1 Access for Due Diligence. The Parties shall grant to one another access to their respective Properties for purposes of permitting the other party to conduct environmental due diligence activities thereon. Such activities shall be subject to such reasonable access agreements as the Parties may reasonably negotiate with respect to the Properties.

6.2 Environmental Condition of Property and National Environmental Policy Act Compliance. Prior to Closing, as hereinafter defined, and as required by the authorizing **Legislation** at **Exhibit A**, the CITY shall fund the GOVERNMENT's completion of Environmental Condition of Property ("**ECP**") surveys on the **Navy Property** and on the **City Property**. The CITY shall also fund GOVERNMENT development of appropriate and legally sufficient environmental impact analysis documentation which, in the GOVERNMENT's opinion, complies with the GOVERNMENT's obligations under the National Environmental Policy Act ("**NEPA**") for the proposed action of exchanging the **Navy Property** and the **City Property** ("**NEPA Documentation**"). The final decision maker with respect to the sufficiency of supporting information provided by the CITY and the adequacy of NEPA Documentation for the proposed acquisition, disposal and relocation actions shall be the GOVERNMENT.

6.3 Environmental Covenant with Respect to Replacement **Navy Property**. The City shall include in its real property interest conveyance documents to the GOVERNMENT for the **City Property** an environmental covenant, **Exhibit D** attached hereto and incorporated by reference. Evidence of the CITY's authority to provide such covenant must be provided to GOVERNMENT.

6.4 Covenant with Respect to Existing **Navy Property**. In accordance with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**") and Department of Defense Instruction ("**DoDI**") 4165.72, the GOVERNMENT shall provide CITY with an appropriate CERCLA 120(h) Covenant ("**CERCLA Covenant**") with respect to the **Navy Property** as part of the Deed from the GOVERNMENT to CITY.

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7. CONDITION OF PROPERTY.

7.1 GOVERNMENT agrees that the land to be conveyed to the CITY will be in the following condition within thirty (30) days of the Closing date:

7.1.1 The GOVERNMENT shall convey to the CITY and the CITY shall accept the **Navy Property** from the GOVERNMENT in the condition that exists as of the Closing Date. Any personal property, fixtures, or other structures to be retained by the GOVERNMENT shall be removed from the Property prior to the Closing Date. The GOVERNMENT shall relinquish any claim or interest in the personal property, fixtures, or other structures remaining on the Property on the Closing Date, and the CITY may dispose of any personal property, fixtures, or other structures remaining on the Property on the Closing Date at its sole discretion, without any further payment or reimbursement to the GOVERNMENT.

7.2 CITY agrees that the real property interests conveyed to the GOVERNMENT will be in the following condition within thirty (30) days of the Closing date:

7.2.1 The CITY shall convey to the GOVERNMENT and the GOVERNMENT shall accept the **City Property** from the CITY in the condition that exists as of the Closing Date. For land that is conveyed any personal property, fixtures, or other structures to be retained by the CITY shall be removed from the Property prior to the Closing Date. The CITY shall relinquish any claim or interest in the personal property, fixtures, or other structures remaining on the Property on the Closing Date, and the GOVERNMENT may dispose of any personal property, fixtures, or other structures remaining on the Property on the Closing Date at its sole discretion, without any payment or reimbursement to the CITY. **However, the City shall retain all utility easements on the City Property.**

8. OTHER CONDITIONS. Prior to Closing, the following conditions must be satisfied:

8.1 Determination of Suitability for Transfer. The GOVERNMENT is required to issue separate Environmental Condition of Property (ECP) forms documenting the suitability for acquisition of the **City Property** and suitability for transfer of the **Navy Property** in accordance with the appropriate CERCLA Covenant as recited above in section 6. NEPA Documentation for the disposal and the acquisition actions must be complete and approved by the GOVERNMENT in order to complete the ECPs.

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8.2 Historic Preservation Requirements. Prior to Closing CITY shall comply with any National Historic Preservation Act (NHPA) requirements to the satisfaction of the GOVERNMENT and cooperate with GOVERNMENT to obtain any required agreements from appropriate Federal, State and Local authorities with respect to any NHPA requirements applicable and pertaining to the **Navy Property** and the **City Property**. Such documentation, if required, must be provided to the GOVERNMENT so it can be reflected in the NEPA Documentation for this action. It therefore must be obtained before the NEPA process can reach a decision document. CITY is responsible for all costs associated with this compliance process.

8.3 Due Diligence. The Parties must complete all due diligence activities described in this **Agreement** or otherwise necessary to their reasonable satisfaction with respect to the Properties. The Parties recognize that all due diligence may not be complete at the date this **Agreement** is signed, and that information may arise that could cause the Parties to decide to amend this **Agreement** in accordance with paragraph 11.6 below.

9. LAND EXCHANGE COSTS. The CITY shall pay the following costs and expenses in connection with this exchange transaction, not to exceed total budgeted amount of \$500,000:

9.1 Costs with Respect to the Properties. The CITY shall pay or reimburse the following with respect to the City Property and the Navy Property:

9.1.1 The costs of all appraisals, surveys, permits, fees, environmental compliance and environmental impact analysis (NEPA).

9.1.2 The closing costs and costs of preparation and recording of the real property interest conveyance documents, whether deeds or restrictive easements, and other documents of conveyance.

9.1.3 Any transfer fees, franchise taxes, deed taxes, registry stamps or the like imposed on the conveyance necessary to record real property interest conveyance documents, whether deeds or restrictive easements, if any.

9.1.4 The premium charged by the Title Company in connection with the issuance of an Owner's Policy of Title Insurance with respect to each of the Properties base premium and extended coverage exclusive of special endorsements.

9.2 Other Administrative Costs. As required by the **Legislation**, CITY shall pay, or reimburse, all other administrative costs related to the exchange of property interests to include costs incurred preparing and executing the land exchange agreement authorized under Section 2845(c). Administrative costs include support costs, including contract, labor and travel costs

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incurred by the GOVERNMENT to prepare for this exchange and for the final execution of the real property interest conveyance documents, whether deeds or restrictive easement.

9.3. Manner and Timing of Reimbursement of GOVERNMENT Costs.

9.3.1 CITY shall issue the required reimbursement of GOVERNMENT's costs via payments as follows:

9.3.1.1. CITY shall make an initial payment to GOVERNMENT in the amount of \$_____ within 30 days of receipt of invoice.

9.3.1.2. The remaining land exchange costs are to be forwarded to the GOVERNMENT within 30 days of receipt of invoice.

9.3.1. All reimbursement payments for the remaining Land Exchange Costs identified in Section 9 shall be made within 30 days of receipt of invoice. Reimbursement payments to the Government shall be made by Electronic Funds Transfer (EFT) utilizing procedures outlined on the www.Pay.gov. Electronic Funds Transfer procedures will be provided via separate correspondence. If EFT is not possible, payment may be effected by paper check made payable to the "The U.S. Treasury" in the appropriate sum and mailed to:

Commanding Officer
Naval Facilities Engineering Command Southeast
ATTN: Real Estate Contracting Officer (AM11)
Box 30, Bldg. 903
Jacksonville, FL 32212-0030

9.3.3 If a Party determines it may be necessary to change the manner, frequency or amounts of the periodic reimbursement payment(s), the Parties agree to discuss and come to mutual agreement on any such adjustments. Such adjustments will be memorialized in an amendment to this Agreement in accordance with paragraph 11.6 below.

9.3.4 As required by the **Legislation, Exhibit A**, if the CITY provides funds in excess of actual costs incurred by GOVERNMENT, the GOVERNMENT shall refund the excess amount to the CITY.

9.4 Unforeseen Additional Costs. The Parties acknowledge that there may be unavoidable additional costs (*e.g.*, if the environmental impact analysis process reveals a need for further studies or remediation of the Properties). Should it become apparent that additional costs may

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need to be incurred to enable completion of this Land Exchange, the Parties agree to discuss and come to agreement on such additional costs before they are incurred.

10. CLOSING. Subject to satisfaction of the conditions to closing and other terms and conditions of this **Agreement** as set forth herein, the closing of the Land Exchange (“**Closing**”) shall occur on date or dates mutually and reasonably designated by the Parties, time being of the essence, following Secretary of the Navy approval of this land exchange (“**Closing Date**” or “**Date of Closing**”). The Closing shall require the additional separate approval of the Corpus Christi City Council of an Ordinance to authorize the City Manager to execute all documents necessary to convey the City Property to the Government. The Closing shall take place at such location as the Parties reasonably determine. Possession shall be delivered on the Closing Date. Nothing in this Agreement precludes the Parties from closing on these Properties on different dates, if mutually agreeable.

10.1 Closing Documents. At or prior to the Closing, each party shall with respect to its Property deliver to the other party:

10.1.1. CITY Documents. CITY shall deliver to the Government real property interest conveyance documents, whether deeds or restrictive easements, to the **CITY Property**. The real property interest conveyance documents, whether deeds or restrictive easements, from CITY to the GOVERNMENT for the **City Property** shall be in substantially the form attached hereto as **Exhibit E**. Title to the **City Property** shall be free from all exceptions except for those permitted title exceptions accepted by the GOVERNMENT and set forth in the Title Commitment for the **City Property**.

10.1.2 Government Deed. The GOVERNMENT shall deliver to CITY a Special Warranty Deed for the **Navy Property** in substantially the form attached hereto as **Exhibit F**.

11. MISCELLANEOUS.

11.1 Time is of the Essence. Time is of the essence for this Agreement. It is understood that each party will employ due diligence in carrying out all necessary steps to accomplish all elements of this land exchange at the earliest possible dates.

11.2 Governing Law. This Agreement is made and executed under and in all respects to be governed and construed by Federal Law and Section 2845 of Public Law No. 115-91, the National Defense Authorization Act for Fiscal Year 2018

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11.3 Legislative Jurisdiction. CITY agrees to promptly assist GOVERNMENT with any actions necessary to support the GOVERNMENT in formally seeking concurrent legislative jurisdiction from the State of Texas over the **City Property**.

11.4 Notices. Any notice required to be given to either party pursuant to this **Agreement** shall be in writing and shall be deemed duly given at the date of mailing if sent by registered or by certified mail, return receipt requested, to the address identified below.

For the GOVERNMENT:

Commanding Officer
Naval Facilities Engineering Command Southeast
ATTN: Real Estate Contracting Officer (AM11)
Box 30, Bldg. 903
Jacksonville, FL 32212-0030

For CITY OF CORPUS CHRISTI:

INSERT POC INFORMATION FOR CITY OF CORPUS CHRISTI

11.5 Waiver Rights. Either party at its option may waive any right conferred upon it by this Agreement. Except as provided otherwise herein, such waiver may be made by and only by giving the other party written notice specifically describing the right waived.

11.6 Amendment. This Agreement shall be amended only by written instrument signed by both Parties.

11.7 Construction. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits the singular shall include the plural the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

11.8 Successors And Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the Parties hereto.

11.9 Invalidity. If for any reason any portion or paragraph of this **Agreement** shall be declared void and unenforceable by any court of law or equity of competent jurisdiction it shall only affect such particular portion or paragraph of this **Agreement** and the balance of this **Agreement** shall remain in full force and effect and shall be binding upon the Parties hereto.

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11.10 Survival of Closing. All representations, agreements, and obligations of the Parties made part of this **Agreement** shall survive Closing and the same shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties in accordance with their respective terms.

11.11 Entire Agreement. This **Agreement** forms the entire agreement between the Parties as to scope and subject matter. All prior discussions and understandings concerning the scope and subject matter of this **Agreement** are superseded and incorporated by this **Agreement**.

11.12 Anti-Deficiency Act. Notwithstanding any provision to the contrary, all of GOVERNMENT'S activities under or pursuant to this **Agreement** are subject to the availability of appropriated funds, and no provisions shall be interpreted to require obligation or provision of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. Additionally, nothing contained in this **Agreement** shall be considered to imply that the Congress of the United States of America will, at any later date, appropriate sufficient funds to meet the GOVERNMENT's obligations under this **Agreement** or any deficiencies hereunder.

(SIGNATURES ON NEXT PAGE)

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IN WITNESS WHEREOF, the Parties hereto have executed this **Agreement** as of the date and year first above written.

CITY OF CORPUS CHRISTI, TEXAS, a political subdivision of the State of Texas acting by and through its duly authorized **City Manager or designee**

Mark Van Vleck, Assistant City Manager

ATTEST: Rebecca Huerta

City Secretary

Date: _____

UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY

By: _____

Its: REAL ESTATE CONTRACTING OFFICER

Date: _____

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LIST OF EXHIBITS

- Exhibit A: Legislation
- Exhibit B: **Navy Property** Map
- Exhibit C: **City Property** Maps
- Exhibit D: Environmental Covenant
- Exhibit E: Deed and Restrictive Easement templates (City to Navy)
- Exhibit F: Special Warranty Deed (Navy to City)

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