

GROUNDWATER RIGHTS PURCHASE AND SALE AGREEMENT

This Groundwater Rights Purchase and Sale Agreement (this “Agreement”) is made and entered into by and between ERF REAL ESTATE, INC., a Texas nonprofit corporation (“Seller”), and the CITY OF CORPUS CHRISTI, a home rule Texas municipality (“Buyer”).

RECITALS

1. Seller is the owner of the surface and groundwater rights (the “Groundwater Rights” as defined below) beneath the surface of approximately 2,300 acres of land located in Nueces County, Texas, as more particularly described in Exhibit A attached hereto and incorporated herein for all purposes (the “Real Property”).
2. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Groundwater Rights associated with the Real Property with specified rights to access the such Groundwater Rights on the surface of the Real Property, subject to the terms and conditions of this Agreement.

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

ARTICLE 1 DEFINITIONS

Definitions. As used in this Agreement, the following terms shall have the meanings below:

- 1.1. “Closing” means the consummation of the purchase and sale of the Groundwater Rights pursuant to this Agreement under Article VI.
- 1.2. “Closing Date” means the date scheduled under Section 6.1 on which the Closing occurs.
- 1.3. “District” means the Corpus Christi Aquifer Storage and Recovery Conservation District.
- 1.4. “District Rules” means all rules, regulations, bylaws, policies, and procedures adopted by the District that govern the exploration, drilling, production, transportation, and use of Groundwater within the District’s jurisdiction, as such rules may be amended from time to time.
- 1.5. “Earnest Money Deposit” is the Earnest Money deposited with the Escrow Agent in an amount equal \$200,000.00. Seller shall deposit the Earnest Money within three business days after the Effective Date.
- 1.6. “Effective Date” is the date the Escrow Agent acknowledges receipt of a complete copy of this Agreement fully executed by Seller and Buyer.

- 1.7. “Escrow Agent” means [Title Company], [Address].
- 1.8. “Groundwater” means all of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons below 350 feet beneath the surface of the Real Property, excluding underflow or flow in a defined subterranean channel, and as defined by Section 36.001(5) of the Texas Water Code.
- 1.9. “Groundwater Rights” means the Groundwater, together with all associated rights related to the Groundwater including but not limited to the right to capture, explore for, drill for, develop, withdraw, produce, store, treat, transport and/or otherwise beneficially use such Groundwater.
- 1.10. “Permits” means any applicable permits required under the District’s rules for drilling wells for Groundwater on the Real Property of sufficient design to produce water for municipal use, any permits for producing Groundwater from the Real Property, and any permits required for transportation of Groundwater from the Real Property.
- 1.11. “Purchase Price” means the amount set forth in Section 2.2.
- 1.12. “Title Company” means the title insurance company selected by Seller under Section 4.1.

ARTICLE 2 PURCHASE AND SALE

- 2.1. Agreement to Purchase and Sell. Subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Groundwater Rights, including to the certain rights to use the surface of the Real Estate, as provided herein.
- 2.2. Purchase Price. The purchase price for the Groundwater Rights will be \$28,000,000.00 (the “Purchase Price”). The purchase price shall not be subject to adjustment.
- 2.3. Payment of Purchase Price. The remainder of the Purchase Price, after giving credit for the Earnest Money Deposit, shall be due and payable within one year from the Closing Date by wire transfer of immediately available funds to an account designated by Seller.

ARTICLE 3 MATTERS PRIOR TO CLOSING

- 3.1. Petition for Inclusion in District. Within ten (10) business days of the execution of this Agreement, Seller agrees to petition for inclusion of the Real Property within the jurisdiction of the District. Buyer agrees to cooperate in the preparation and filing of such petition and assist Seller in arranging for a meeting of the governing body of the District to consider and approve such petition.

3.2. **Buyer's Access Prior to Closing.** Upon the execution of this Agreement, Buyer and its agents, employees, consultants, and contractors shall have the right to enter upon the Real Property to conduct such tests, inspections, and investigations as Buyer deems necessary or appropriate. Buyer acknowledges that Buyer already is familiar with the Real Property and the Groundwater Rights and has determined that they are satisfactory for Buyer's intended use. Buyer's access and entry onto the Real Property prior to the Closing will be done with at least two (2) business days' prior notice to Seller and performed in a manner to minimize interruptions of existing activities on the Real Property. If the Real Property is physically altered because of Buyer's inspections, Buyer must return the Real Property to its pre-inspection condition promptly after the alteration occurs.

3.3. **Buyer's Insurance; and Release of Seller.** Buyer must carry commercial general liability insurance with coverage of at least \$1,000,000 to cover its activities on the Real Property prior to the Closing Date. Buyer's insurance policy shall name Seller as an additional insured on a primary non-contributory basis. Buyer will deliver evidence of such insurance coverage to Seller prior to any entry onto the Real Property. As an alternative to such insurance, Buyer may certify to Seller that Buyer's insurance requirements herein are satisfied under a self-insurance program maintained by Buyer. Additionally, Buyer shall cause each of its contractors conducting activities on the Real Property to provide such commercial general liability insurance for the benefit of Seller. Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs), but excluding any claims based on intentional actions or gross negligence, resulting from Buyer's activities on the Real Property. The obligations of Buyer under this provision will survive any termination of this Agreement and Closing.

3.4. **Seller's Records.** Seller has delivered to Buyer copies of plans, studies, surveys and other documents pertaining to the Real Property and the Groundwater. **NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, SELLER EXPRESSLY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY DOCUMENTS, RECORDS OR ANY OTHER INFORMATION OR MATERIALS PREPARED BY THIRD PARTIES AND FURNISHED TO BUYER REGARDING THE GROUNDWATER OR THE REAL PROPERTY (COLLECTIVELY, THE "SELLER RECORDS"). BUYER AGREES THAT THE SELLER RECORDS PROVIDED TO BUYER HAVE BEEN PROVIDED ON AN "AS IS" BASIS, AND SELLER SHALL HAVE NO OBLIGATION TO VERIFY OR COMPILE SUCH DATA. BUYER ACKNOWLEDGES AND AGREES THAT ALL SUCH SELLER RECORDS HAVE BEEN PROVIDED OR MADE AVAILABLE TO BUYER AS A COURTESY ONLY AND THAT ANY RELIANCE ON OR USE OF SUCH INFORMATION SHALL BE AT THE SOLE RISK OF BUYER.**

3.5. **Seller's Development of Additional Wells.** Seller is in the process of drilling five additional water wells on the Real Property for a total of six water wells including the existing water well on the Real Property. Seller shall continue the drilling of such additional water wells according to the plans and specifications furnished by Seller to Buyer. Buyer may inspect and monitor the progress of such water wells subject to the conditions on access to the Real Property provided above. Upon the Closing or the completion of such additional water wells, Seller shall convey such water wells to Buyer

on an “AS IS” basis as provided below.

ARTICLE 4 **TITLE AND SURVEY**

- 4.1. **Title Commitment.** Seller has provided to Buyer copies of Seller’s owner policies of title insurance covering the Real Property (the “Owner Policies”). Seller additionally has provided other instruments to Buyer executed by Seller covering the Real Property not included in the Owner Policies (such as a pipeline easement previously granted to Buyer). Within 10 days after the Effective Date, Seller shall, at Seller’s expense, cause the Title Company to deliver to Buyer a commitment for title insurance covering the Groundwater Rights and the access easement rights (the “Title Commitment”), together with copies of all documents referenced in the Title Commitment. The Title Commitment shall include all exceptions applicable to the Real Property, as the same may affect the Groundwater Rights and the surface access rights. The Title Commitment will be issued by a title company selected by Seller (the “Title Company”).
- 4.2. **Title Review.** All matters shown on the Owner Policies and otherwise disclosed by Seller to Buyer prior to the execution of this Agreement shall be deemed “Permitted Exceptions.” Buyer shall have until the date that is 20 days after Buyer receives the Title Commitment (the “Title Review Period”) to review the Title Commitment and to notify Seller in writing of any objections Buyer may have (the “Title Objections”) to matters disclosed in the Title Commitment that have not been previously disclosed in the Owner Policies or other disclosures. The parties agree that all exceptions on Schedule C of the Title Commitment shall be satisfied by Seller as required by Schedule C and do not require any Title Objection.
- 4.3. **Seller’s Response to Title Objections.** Seller shall have 10 days after receipt of Buyer’s Title Objections to notify Buyer in writing whether Seller elects to cure such Title Objections. If Seller elects not to cure any Title Objection, or fails to respond within such 10-day period, Buyer may elect, by written notice to Seller within 20 days after the earlier of (i) receipt of Seller’s notice that Seller will not cure such Title Objection, or (ii) the expiration of Seller’s 10-day response period, to either (a) waive such Title Objection and proceed to Closing, in which case such Title Objection shall be deemed a Permitted Exception, or (b) terminate this Agreement, in which case the Earnest Money shall be returned to Buyer, less the amount of \$10,000.00 to be the independent consideration for this Agreement, and neither party shall have any further rights or obligations under this Agreement except for those that expressly survive termination.
- 4.4. **Survey.** Buyer acknowledges that Seller has previously delivered to Buyer a complete copy of its recent survey of the Real Property dated _____ (the “Survey”). Buyer has approved the survey and confirmed that no additional survey is required.

ARTICLE 5

SURFACE USE RIGHTS AND CONDITIONS

5.1. **Surface Use to be Granted to Buyer.** Included with the conveyance of the Groundwater Rights to Buyer, Seller grants to Buyer rights to use the surface of the Real Property subject to the following conditions. Such rights to use the surface shall be included in the deed provided at Closing, and no additional compensation shall be required for the use of the surface in such manner.

- (1) Buyer is granted the right of ingress and egress to the Real Property using the existing roads on the Real Property. Buyer shall share in the reasonable costs of maintenance of such existing roads and any new roads established by Seller that are utilized by Buyer on a 50:50 basis or such other basis as agreed by the parties.
- (2) Buyer is granted the right to establish additional water well sites, roadways to access such water well sites, utility easements to provide utilities to such water well sites, and pipeline easements to convey water from such water well sites on the Real Property; provided that prior to the establishment of any such sites, roadways or easement locations, Buyer shall provide Seller with a map in reasonable detail showing the locations and obtain Seller's approval of same, which approval shall not be unreasonably withheld, conditioned or delayed.
- (3) Water well sites generally shall not exceed two (2) acres in size, and Buyer agrees to fence such water well sites with a fence capable of turning cattle. Seller shall not enter any water well sites except upon two (2) business days' written notice to Buyer except in emergency situations.
- (4) Buyer is granted a site not to exceed five (5) acres in size at a mutually acceptable location for the purpose of Buyer's construction of a water treatment facility for the Groundwater produced from the Real Property, together with an additional site of one (1) acre in size adjacent to such location for the drilling of an injection well to dispose of an water effluent from the treatment facility. Such sites shall be fenced and subject to entry on the same basis as water well sites provided above.
- (5) All electrical lines extending from the primary service lines along the boundaries of the Real Property shall, to the extent feasible, be located underground; provided that temporary power for a drill site may be established overhead on poles until the water well is determined to be successfully completed and ready for service.
- (6) Buyer shall be solely responsible for the maintenance of all water well sites, new roadways, utility installations and pipeline installations constructed by Buyer as provided in Section (2) above. All underground installations shall be buried a minimum of 36 inches below grade level, and Buyer agrees to use the "double-ditch" method of excavation so that surface soils are returned to the surface upon completion.
- (7) All easements for roadway access, electrical lines and pipelines shall be non-

exclusive, and Seller expressly reserves the right to grant other easements, including pipeline easements, that may cross any such easements in a manner that avoids any disruption of Buyer's use of the easements for Buyer's purposes.

- (8) All access to the Real Property shall be subject to Seller's access and security controls; provided that, Buyer and Buyer's designated contractors shall be provided access rights on the same basis as Seller's employees and contractors. All gates shall remain closed and secured except when used for ingress or egress, and all fences shall remain intact except as permission may be granted by Seller for the temporary opening of a fence for the ingress or egress of equipment or materials. In such event, Buyer shall be responsible for the restoration of any such fencing to its original or improved condition.
- (9) Buyer must carry commercial general liability insurance with coverage of at least \$1,000,000 to cover its activities on the Real Property. Buyer's insurance policy shall name Seller as an additional insured on a primary non-contributory basis. As an alternative to such insurance, Buyer may certify to Seller that Buyer's insurance requirements herein are satisfied under a self-insurance program maintained by Buyer. Buyer will provide evidence of such insurance coverage to Seller annually during Buyer's operations on the Real Property. Additionally, Buyer shall cause each of its contractors conducting activities on the Real Property to provide such commercial general liability insurance for the benefit of Seller. The minimum amount of such insurance coverage may be increased by Seller from time to time based on inflation. Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs), but excluding any claims based on intentional actions or gross negligence, resulting from Buyer's activities on the Real Property.
- (10) Buyer may produce and use water above the depth elevation of Groundwater described above for the limited purpose of operation of its facilities on the Real Property; and such water may not be transported off the Real Property for any municipal or other uses of Buyer.

- 5.2. Reserved Water Wells. Specifically excluded from this conveyance is the right of Seller to produce water from its own water wells for domestic, recreational, agricultural or research purposes on the Real Property; provided that such uses do not unreasonably interfere with Buyer's production, treatment or transportation of Groundwater for its municipal uses.
- 5.3. Reserved Rights to Use of Surface. Seller specifically reserves the right to use the surface of the Real Property domestic, recreational, agricultural or research purposes. Seller agrees not to subdivide the Real Property for residential subdivision purposes.
- 5.4. Transmission Pipeline Easements. In addition to the rights provided above, upon Buyer's request at any time until the expiration of one year after the Closing Date Seller agrees to provide to Buyer up to two easements fifty (50) feet in width for the purposes of

construction and maintenance of a water transmission pipeline for Buyer's water: (1) an easement running parallel to Highway 624, and (2) an easement following the meanders of Cayamon Creek. Each easement shall include a temporary construction easement one hundred (100) feet in width adjacent to such permanent easement. Buyer agrees to provide to Seller a metes and bounds description for such easements prepared by a registered professional land surveyor, and Seller agrees to execute and deliver an easement covering each such location. Such easements shall require use of the "double-ditch" method of excavation so that surface soils are returned to the surface upon completion.

ARTICLE 6 **CLOSING**

- 6.1. **Closing Date.** The Closing shall take place on the date that is 60 days after the expiration of the Effective Date, or such earlier date as may be mutually agreed upon by Seller and Buyer.
- 6.2. **Seller's Deliveries.** At Closing, Seller shall deliver to Buyer the following:
 - (1) A Groundwater Rights Special Warranty Deed conveying the Groundwater Rights to Buyer, including the surface rights described herein, in the form attached as Exhibit B, executed and acknowledged by Seller. Such Deed shall include a Right of First Refusal in favor of Seller in the event that Buyer ever elects to sell, convey or assign the Groundwater Rights to any third party which is not a governmental entity or nonprofit service corporation or entity controlled by a governmental entity.
 - (2) A Bill of Sale conveying all rights in and to the six (6) water wells, pumps, motors, well casing, and related equipment drilled, completed, constructed, and installed on the Real Property and owned by Seller in connection with the Groundwater Rights, in the form attached as Exhibit C (the "Bill of Sale"), executed by Seller; provided that, if the all five (5) additional water wells are not completed as of the Closing Date, such Bill of Sale only shall include the completed water wells. Upon the completion of the remaining water wells, Seller agrees to execute and deliver to Buyer a Bill of Sale covering such water wells on the same basis.
 - (3) An affidavit of Seller stating that there are no oral or unrecorded leases or agreements of the surface or subsurface of the Real Property.
 - (4) A non-foreign affidavit as required by Section 1445 of the Internal Revenue Code.
 - (5) A resolution or other evidence of authority, in a form reasonably acceptable to the Title Company, authorizing the sale of the Groundwater Rights and the execution and delivery of this Agreement and all documents to be executed and delivered by Seller at Closing.
 - (6) Such other customary documents as may be reasonably necessary to consummate the transaction contemplated by this Agreement, as reasonably approved by the parties.

6.3. Buyer's Deliveries. At Closing, Buyer shall deliver to Seller the following:

- (1) Such customary documents as may be reasonably necessary to consummate the transaction contemplated by this Agreement, as reasonably approved by the parties.

6.4. Closing Costs. Closing costs shall be allocated as follows:

- (1) Seller shall pay (i) the cost of the Title Commitment, (ii) the basic premium for the owner's policy of title insurance, (iii) the cost of releasing any liens or encumbrances that affect the Groundwater Rights, (iv) any transfer taxes or fees associated with the transfer of the Groundwater Rights, and (v) one-half of the Escrow Agent's fees.
- (2) Buyer shall pay (i) all recording fees, (ii) one-half of the Escrow Agent's fees, and (iii) any premium or other fees or costs charged by the Title Company for other endorsements, amendments or modifications to the owner's policy of title insurance, as may be requested by Buyer.
- (3) Each party shall pay its own legal fees.

ARTICLE 7 **REPRESENTATIONS AND WARRANTIES**

7.1. Seller's Representations and Warranties. Seller represents and warrants to Buyer, as of the Effective Date (unless otherwise provided below) and as of the Closing Date, that:

- (1) Seller is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Texas.
- (2) Seller has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- (3) This Agreement has been duly authorized, executed, and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms.
- (4) The execution, delivery, and performance of this Agreement by Seller does not conflict with or result in a violation of Seller's organizational documents or any judgment, order, or decree of any court or arbiter to which Seller is a party.
- (5) Seller has not received any written notice of any legal actions, administrative proceedings, or disputes that have been filed against Seller challenging the Groundwater Rights, or the permits or authorizations related thereto, or the right to transfer them to Buyer and to the best of Seller's knowledge no such filings have been made.

- (6) Seller has not received any written notice of any violation with any applicable District, State, or local laws, rules, and regulations relating to the Groundwater Rights or the permit(s) related thereto and to the best of Seller's knowledge no such violations exist.
- (7) Seller has not received any written notice of any claims or actions filed against Seller by the District or any other governmental authority regarding the Groundwater Rights or related permits and authorizations and to the best of Seller's knowledge no such claims or actions have been filed.
- (8) There are no leases, licenses, or other agreements granting any person or entity the right to use the Groundwater Rights or any portion thereof that will survive Closing, SAVE AND EXCEPT (i) as may be disclosed in the Title Commitment, and (ii) Excepted Uses reserved in the Vesting Deed and Prior Deeds.
- (9) Seller has not received any written notice of any condemnation or eminent domain proceedings filed or, to Seller's knowledge, threatened against the Groundwater Rights or any portion thereof.

7.2. Limitations and Disclaimers. Seller has not made, and makes no warranties or representations concerning any the Groundwater Rights or the Real Property, except as specifically set forth in this Agreement, and all other representations and warranties, express or implied, in any way relating to the Groundwater Rights or the Real Property or the transaction contemplated by this Agreement are hereby waived by Buyer. Any representations or warranties made by Seller in the future shall be considered void and of no effect unless made in a written document addressed and delivered to Buyer which specifically references this Agreement. As a material part of the consideration for entering into this Agreement, Buyer will accept the Groundwater Rights, the rights to use the surface, and the water wells and related equipment covered by the Bill of Sale on an "AS IS" basis. THIS AGREEMENT IS AN ARM'S-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION AND REFLECTS THE AGREEMENT OF THE PARTIES THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES, EXCEPT THOSE IN THIS AGREEMENT. SELLER DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS REGARDING THE QUANTITY, QUALITY, OR RELIABILITY OF THE GROUNDWATER OR THE AVAILABILITY NOW OR IN THE FUTURE OF AMENDMENTS TO ANY PERMITS NECESSARY FOR BUYER TO USE THE GROUNDWATER FOR ANY PURPOSE. SELLER FURTHER DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS WITH RESPECT TO THE FITNESS OF THE GROUNDWATER FOR ANY PARTICULAR USE. BUYER IS NOT RELYING ON ANY REPRESENTATIONS, DISCLOSURES, OR EXPRESS OR IMPLIED WARRANTIES OTHER THAN THOSE EXPRESSLY CONTAINED IN THIS AGREEMENT. BUYER IS NOT RELYING ON ANY INFORMATION REGARDING THE GROUNDWATER, THE REAL PROPERTY OR THE WATER WELLS PROVIDED BY ANY PERSON, OTHER THAN BUYER'S OWN INSPECTION AND THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT. BY CLOSING THE TRANSACTION AS CONTEMPLATED HEREIN, BUYER AGREES THAT (A) BUYER SHALL BE DEEMED TO HAVE ACCEPTED ALL RISKS ASSOCIATED WITH ADVERSE PHYSICAL CHARACTERISTICS AND EXISTING ENVIRONMENTAL CONDITIONS THAT MAY OR MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATION OF THE GROUNDWATER, THE REAL

PROPERTY AND THE WATER WELLS AND (B) AS BETWEEN SELLER AND BUYER, BUYER SHALL BE DEEMED TO HAVE ACCEPTED ALL COSTS AND LIABILITIES ASSOCIATED IN ANY WAY WITH THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE GROUNDWATER, THE REAL PROPERTY AND THE WATER WELLS. FURTHER, IN CLOSING THE TRANSACTION CONTEMPLATED HEREIN, BUYER ACKNOWLEDGES AND AGREES THAT BUYER HAS HAD AN OPPORTUNITY TO INSPECT THE GROUNDWATER, THE REAL PROPERTY AND THE WATER WELLS AND TO REVIEW RECORDS AND FILES OF SELLER RELATING TO THE ABOVE, INCLUDING THE SELLER RECORDS. BUYER ACKNOWLEDGES THAT BUYER IS FULLY AWARE OF AND ACCEPTS ALL CONDITIONS RELATING TO THE GROUNDWATER, THE REAL PROPERTY AND THE WATER WELLS. The provisions of this Section 7.2 will survive Closing.

7.3. Buyer's Representations and Warranties. Buyer represents and warrants to Seller as follows:

- (1) Buyer is a home rule municipality duly organized and validly existing under the laws of the State of Texas.
- (2) Buyer has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- (3) This Agreement has been duly authorized, executed, and delivered by Buyer and constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.
- (4) The execution, delivery, and performance of this Agreement by Buyer does not conflict with or result in a violation of Buyer's charter, ordinances, or any judgment, order, or decree of any court or arbiter to which Buyer is a party.

7.4. The representations and warranties set forth in this Article 7 shall survive Closing for a period of one (1) year.

ARTICLE 8 **DEFAULT AND REMEDIES**

8.1. Seller's Default. If Seller defaults in the performance of its obligations under this Agreement, Buyer may, as its sole and exclusive remedy, either (a) terminate this Agreement by written notice to Seller, in which case the Earnest Money Deposit shall be returned to Buyer, less the sum of \$10,000.00, which shall be deemed the non-refundable independent consideration for the purposes of this Agreement, or (b) seek specific performance of Seller's obligations under this Agreement.

8.2. Buyer's Default. If Buyer defaults in the performance of its obligations under this Agreement, Seller may, as its sole and exclusive remedy, either (a) terminate this Agreement by written notice to Buyer, in which case the Earnest Money Deposit shall be paid to Seller as liquidated damages, or (b) seek specific performance of Seller's obligations under this Agreement.

8.3. **Notice and Cure Period.** Except as otherwise provided herein, Seller and Buyer covenant and agree, each with the other, to give to the other written notice of any default occurring, and such party in default shall have a period of ten (10) days to cure such default prior to the exercise of any right or remedy provided in this Agreement by the non-defaulting party; provided, however, neither party shall be obligated to provide written notice of default and opportunity to cure with respect to the failure to close, fund the purchase of the Groundwater Rights on the Closing Date, or deliver the required documents prior to the exercise of any right or remedy of provided in this Agreement on account thereof.

ARTICLE 9 MISCELLANEOUS

9.1. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, or (d) by email, addressed as follows:

If to Seller: ERF Real Estate, Inc.
555 N. Carancahua St Ste 700
Corpus Christi, Texas 78401
Email: paltheide@edrachal.org

If to Buyer: City of Corpus Christi
Attn: Peter Zanoni, City Manager
1201 Leopard Street, 5th Floor
Corpus Christi, TX 78401
Email: PeterZ@corpuschristitx.gov

Corpus Christi Water
Attn: Nicholas Winkelmann, Interim COO
Email: nickw@corpuschristitx.gov

Copy to: City Attorney
Attn: Miles Risley
Milesr@corpuschristitx.gov

Notices shall be effective upon receipt or refusal of delivery. Either party may change its address for notice by giving notice to the other party in accordance with this Section 9.1

9.2. **Entire Agreement.** This Agreement, including all exhibits attached hereto, constitutes the entire agreement between Seller and Buyer with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, warranties, and understandings of the parties, whether oral, written, or implied, and neither party is relying on any statements or representations of any agent of the other party, that are not contained herein.

- 9.3. Amendments. This Agreement may be amended only by a written instrument executed by both Seller and Buyer.
- 9.4. Assignment. Buyer may not assign this Agreement or any of Buyer's rights under it without Seller's prior written consent, which consent may be granted or withheld in Seller's sole discretion, and any attempted assignment without Seller's consent is void.
- 9.5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to principles of conflicts of law.
- 9.6. Venue. Any legal action or proceeding with respect to this Agreement shall be brought in the courts of Nueces County, Texas, and each party consents to the jurisdiction of such courts.
- 9.7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic or facsimile signatures shall be deemed original signatures.
- 9.8. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 9.9. Time of Essence. Time is of the essence with respect to all provisions of this Agreement.
- 9.10. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- 9.11. Further Assurances. Each party shall execute and deliver such additional documents and instruments as may be required by the Title Company and/or the District (subject to the parties' reasonable approval) to effectuate the provisions and purposes of this Agreement.
- 9.12. Legal Fees. In the event of any litigation between the parties with respect to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses, including reasonable legal fees, including costs of court, expert witnesses, and costs of appeal, incurred by the prevailing party in connection with such litigation.
- 9.13. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom enforcement of the waiver is sought. No waiver of any right or remedy in respect of any occurrence or event on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence or event on any other occasion.

- 9.14. **Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
- 9.15. **Time Periods.** Unless otherwise specified, reference to “day” in this Agreement means a calendar day, and reference to “business day” means any calendar day other than a Saturday, Sunday or legal holiday. If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or legal holiday recognized by Buyer, then the time of such period shall be deemed extended to the next business day.
- 9.16. **Exhibits.** All exhibits attached to this Agreement are incorporated herein by reference and made a part hereof.
- 9.17. **Back-up Contracts.** Seller reserves the right to enter into a back-up contract for the sale of the Groundwater Rights to another party, excluding any Permitted Assignee, subject to the rights of this Agreement.

[Signature page follows]

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

SELLER:

ERF REAL ESTATE, INC.
a Texas nonprofit corporation

By: _____
Name: _____
Title: _____

BUYER:

CITY OF CORPUS CHRISTI,
a home rule Texas municipality

By: _____
Name: _____
Title: _____

APPROVED AS TO LEGAL FORM

Assistant City Attorney

EXHIBITS:

Exhibit A - Legal Description of Real Property
Exhibit B- Form of Groundwater Rights Deed
Exhibit C - Form of Bill of Sale

ESCROW AGENT ACKNOWLEDGEMENT

Receipt of one complete, fully-executed counterpart of this Agreement is hereby acknowledged by the Escrow Agent of the date below.

[Title Company]

By: _____
Name: _____
Its: _____
Date: _____ ("Effective Date")

Receipt of the Initial Earnest Money in the amount of \$200,000.00 is hereby acknowledged by the Escrow Agent as of the date below. The Escrow Agent agrees to hold the Earnest Money in escrow and disburse the Earnest Money as provided in this Agreement.

[Title Company]

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT A
REAL PROPERTY

EXHIBIT B
FORM OF GROUNDWATER RIGHTS SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GROUNDWATER RIGHTS SPECIAL WARRANTY DEED

Date: Effective as of [_____]

Grantor: ERF REAL ESTATE, INC., a Texas nonprofit corporation

Grantee: CITY OF CORPUS CHRISTI, a home rule Texas municipality

Grantee's Mailing Address:

Attn: Peter Zanoni, City Manager
1201 Leopard Street, 5th Floor
Corpus Christi, TX 78401

Consideration: Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Real Property: See Exhibit A attached hereto.

Groundwater: All of the means all of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons below 350 feet beneath the surface of the Real Property, excluding underflow or flow in a defined subterranean channel, and as defined by Section 36.001(5) of the Texas Water Code.

Groundwater Rights: The Groundwater, together with all associated rights related to the Groundwater including but not limited to the right to capture, explore for, drill for, develop, withdraw, produce, store, treat, transport and/or otherwise beneficially use such Groundwater.

Surface Rights: The rights to use the surface of the Real Property subject to the following conditions:

- (1) Grantee is granted the right of ingress and egress to the Real Property using the existing roads on the Real Property. Grantee shall share in the reasonable costs of maintenance of such existing roads and any new roads established by Grantor that are utilized by Grantee on a 50:50 basis or such other basis as agreed by the parties.
- (2) Grantee is granted the right to establish additional water well sites, roadways to access such water well sites, utility easements to provide utilities to such water well sites, and pipeline easements to convey water from such water well sites on the Real Property; provided that

prior to the establishment of any such sites, roadways or easement locations, Grantee shall provide Grantor with a map in reasonable detail showing the locations and obtain Grantor's approval of same, which approval shall not be unreasonably withheld, conditioned or delayed.

- (3) Water well sites generally shall not exceed two (2) acres in size, and Grantee agrees to fence such water well sites with a fence capable of turning cattle. Grantor shall not enter any water well sites except upon two (2) business days' written notice to Grantee except in emergency situations.
- (4) Grantee is granted a site not to exceed five (5) acres in size at a mutually acceptable location for the purpose of Grantee's construction of a water treatment facility for the Groundwater produced from the Real Property, together with an additional site of one (1) acre in size adjacent to such location for the drilling of an injection well to dispose of an water effluent from the treatment facility. Such sites shall be fenced and subject to entry on the same basis as water well sites provided above.
- (5) All electrical lines extending from the primary service lines along the boundaries of the Real Property shall, to the extent feasible, be located underground; provided that temporary power for a drill site may be established overhead on poles until the water well is determined to be successfully completed and ready for service.
- (6) Grantee shall be solely responsible for the maintenance of all water well sites, new roadways, utility installations and pipeline installations constructed by Grantee as provided in Section (2) above. All underground installations shall be buried a minimum of 36 inches below grade level, and Grantee agrees to use the "double-ditch" method of excavation so that surface soils are returned to the surface upon completion.
- (7) All easements for roadway access, electrical lines and pipelines shall be non-exclusive, and Grantor expressly reserves the right to grant other easements, including pipeline easements, that may cross any such easements in a manner that avoids any disruption of Grantee's use of the easements for Grantee's purposes.
- (8) All access to the Real Property shall be subject to Grantor's access and security controls; provided that, Grantee and Grantee's designated contractors shall be provided access rights on the same basis as Grantor's employees and contractors. All gates shall remain closed and secured except when used for ingress or egress, and all fences shall remain intact except as permission may be granted by Grantor for the temporary opening of a fence for the ingress or egress of equipment or materials. In such event, Grantee shall be responsible for the restoration of any such fencing to its original or improved condition.
- (9) Grantee must carry commercial general liability insurance with coverage of at least 1,000,000 to cover its activities on the Real Property. Grantee's insurance policy shall name Grantor as an additional insured on a primary non-contributory basis. As an alternative to such insurance, Grantee may certify to Grantor that Grantee's insurance requirements herein are satisfied under a self-insurance program maintained by Grantee.

Grantee will provide evidence of such insurance coverage to Grantor annually during Grantee's operations on the Real Property. Additionally, Grantee shall cause each of its contractors conducting activities on the Real Property to provide such commercial general liability insurance for the benefit of Grantor. The minimum amount of such insurance coverage may be increased by Grantor from time to time based on inflation. Grantee releases Grantor and those persons acting on Grantor's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs), but excluding any claims based on intentional actions or gross negligence, resulting from Grantee's activities on the Real Property.

(10) Grantee may produce and use water above the depth elevation of Groundwater described above for the limited purpose of operation of its facilities on the Real Property; and such water may not be transported off the Real Property for any municipal or other uses of Grantee.

Reservations from Conveyance and Exceptions to Conveyance and Warranty:

1. All easements, rights-of-way and restrictive covenants of record with the County Clerk of Nueces County, Texas, or which are visible or apparent.
2. All rights to oil, gas and other minerals under the Real Property, including the rights of any lessee or other person claiming an interest in oil, gas and other minerals and/or Groundwater under existing leases.
3. Any existing limitations, restrictions, applicable rules, or other conditions now in effect or that may be adopted or imposed by any applicable groundwater conservation district, including but not limited to the limitations and conditions to the rights to withdraw and beneficially use the Groundwater Rights.
4. Any physical aspect of the Groundwater Rights including but not limited to availability, existence, utility, recoverability, source, quality, condition, potability, chemistry, or other characteristics of groundwater, if any, lying on, under, or over the Real Property.
5. Rights of access except as provided above.
6. Any subsequent decrease in the amount of Groundwater Rights available for withdrawal pursuant to any permit that is the result of any pro rata reduction applied to all holders of permits for withdrawal of Groundwater Rights by any applicable groundwater conservation district or any governmental entity with authority to restrict Groundwater Rights withdrawals.
7. Rights to use Groundwater from existing or future wells on the Real Property in connection with domestic, recreational, agricultural or research purposes on the Real Property; provided that such uses do not unreasonably interfere with Grantee's production, treatment or transportation of Groundwater for its municipal uses..

8. Rights to use Groundwater in connection with any exempt use as set out in Section 36.117(b)(2) of the Texas Water Code for the production of oil, gas and other minerals under the Real Property (“Oil and Gas Production”), and the right to enter into oil, gas and mineral leases on the Real Property for Oil and Gas Production so long as any such lease or leases does not adversely affect the production capacity or water quality of the Groundwater.

Right of First Refusal

In the event Grantee elects to sell, convey or assign the Groundwater Rights to any third party which is not a governmental entity or nonprofit service corporation or entity controlled by a governmental entity, Grantee agrees to notify Grantor in writing prior to any such sale, conveyance or assignment. The notice will state the identity of the proposed transferee and the complete terms of the proposed transfer. Grantor will have the right to purchase the Groundwater Rights on the terms set forth in Grantee’s notice by giving written notice to Grantee within thirty (30) days following the receipt of Grantee’s notice. If Grantor does not affirmatively exercise its right in the specified time and manner, Grantee may transfer the Groundwater Rights on the terms described within the one-year period following such written notice by Grantee. In the event that the terms and conditions are changed or Grantee elects to sell, convey or assign the Groundwater Rights after the expiration of one year, the above process shall be repeated. If Grantor elects to purchase the Groundwater Rights as provided above, this right of first refusal shall terminate upon the closing of such purchase.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells and conveys to Grantee all of Grantor’s Groundwater Rights and the surface rights specified above, together with all rights and appurtenances thereto, to have and to hold forever. Grantor binds Grantor and Grantor’s successors and assigns to warrant and forever defend all and singular the such rights to Grantee and Grantee’s successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

[Signature Pages Immediately Follow]

GRANTOR:

ERF REAL ESTATE, INC.
a Texas nonprofit corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF NUECES

This instrument was acknowledged before me on this _____ day of _____, 2026, by _____, _____ of ERF Real Estate, Inc., a Texas nonprofit corporation, on behalf of said corporation.

Notary Public, State of Texas

Grantee, accepts the attached deed and consents to its form and substance. Grantee acknowledges that the terms of the deed conform with Grantee's intent and that they will control in the event of any conflict with the agreement Grantee signed regarding the Groundwater Rights described in the deed:

GRANTEE:

CITY OF CORPUS CHRISTI, a home rule Texas municipality

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on this _____ day of _____, 2026, by _____, _____ of the City of Corpus Christi, a Texas home rule municipality, on behalf of said entity.

Notary Public, State of Texas

[Exhibit A (legal description of Real Property) is intentionally omitted from this Exhibit B to the Agreement but will be inserted by the parties at Closing.]

EXHIBIT C
FORM OF BILL OF SALE

BILL OF SALE

Date: Effective as of [_____]

Seller: ERF REAL ESTATE, INC., a Texas nonprofit corporation

Buyer: CITY OF CORPUS CHRISTI, a home rule Texas municipality

Buyer's Mailing Address:

Attn: Peter Zanoni, City Manager
1201 Leopard Street, 5th Floor
Corpus Christi, TX 78401

Consideration: Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Real Property: See Exhibit A attached hereto.

Transferred Assets: All rights of Grantor in and to the six (6) groundwater wells, pumps, motors, well casing, and related equipment described on Exhibit B drilled, completed, constructed, and installed on the Real Property owned by Seller.

For the Consideration, Seller transfers to Buyer the Transferred Assets. As a material part of the Consideration for this sale, Seller and Buyer agree that Buyer is taking the Transferred Assets "AS IS" and there are no representations, disclosures, or express or implied warranties except as contained in this bill of sale. Buyer has not relied on any information other than Buyer's inspection of the Transferred Assets.

To have and to hold the Transferred Assets to Buyer, its successors and assigns forever. Seller binds Seller and Seller's successors and assigns to warrant and forever defend all and singular the Transferred Assets to Buyer and Buyer's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through or under Seller but not otherwise.

[*Signature Pages Immediately Follow*]

SELLER:

ERF REAL ESTATE, INC.
a Texas nonprofit corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on this _____ day of _____, 2026,
by _____, _____ of ERF Real Estate, Inc., a Texas
nonprofit corporation, on behalf of said corporation.

Notary Public, State of Texas

Buyer accepts the attached Bill of Sale and consents to its form and substance. Buyer acknowledges that the terms of the Bill of Sale conform with Buyer's intent and that they will control in the event of any conflict with the agreement Buyer signed regarding the Transferred Assets.

BUYER:

CITY OF CORPUS CHRISTI, a home rule Texas municipality

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF NUECES §

This instrument was acknowledged before me on this _____ day of _____, 2026,
by _____, _____ of the City of Corpus Christi, a Texas
home rule municipality, on behalf of said entity.

Notary Public, State of Texas

[Exhibit A (legal description of Real Property) and Exhibit B (the water wells assets) are intentionally omitted from this Exhibit C to the Agreement but will be inserted by the parties at Closing.]