

REAL PROPERTY EXCHANGE AGREEMENT

THIS REAL PROPERTY EXCHANGE AGREEMENT ("Agreement") is between City of Corpus Christi, a Texas home-rule municipality, with address of 1201 Leopard Street, Corpus Christi, Nueces County, Texas 78401 [referred to in this agreement as "City"] and the Port of Corpus Christi Authority of Nueces County with address of 400 Harbor Drive, Corpus Christi, Texas 78401 [referred to in this agreement as "PCCA"].

In consideration of the premises, mutual covenants, and agreements contained in this Agreement, City and PCCA covenant and agree as follows:

ARTICLE 1 EXCHANGE

Agreement to Exchange

1.01 Subject to the terms, provisions, and conditions set forth in this Agreement, City agrees to convey to PCCA the property described as follows:

First Tract

NCAD Property ID: 244289
Legal Description: HILLCREST LTS 13 THRU 15 BLK 16
Common Address: 1622 Van Loan Avenue, Corpus Christi, TX 78407

And

Second Tract

NCAD Property ID: 200109606
Legal Description: HILLCREST LT 1 BLK 40
Common Address: Corpus Christi, TX 78407

together with all and singular the rights and appurtenances pertaining to the property to be conveyed to PCCA, any right, title, and interest of City in and to any improvements, fixtures, and personal property situated on and attached to the property to be conveyed to PCCA (all of the property, rights, and appurtenances that City agrees to convey referred to as "City Tract").(all of the property, rights, and appurtenances that City agrees to convey referred to as "City Tract").

1.02 Subject to the terms, provisions, and conditions set forth in this Agreement, PCCA agrees to convey to City the properties described as follows:

First Tract

NCAD Property ID: 273260
Legal Description: NUECES BAY HTS LTS 12 THRU 14 BK 12
Common Address: 2011 Palm Drive, Corpus Christi, TX 78407

And

Second Tract

NCAD Property ID: 244216
Legal Description: HILLCREST LTS 1 THRU 3 BLK 10
Common Address: 2101 Van Loan Avenue, Corpus Christi, TX 78407

together with all and singular the rights and appurtenances pertaining to the property to be conveyed to City, any right, title, and interest of PCCA in and to adjacent streets, alleys, or rights-of-way, and any improvements, fixtures, and personal property situated on and attached to the property to be conveyed to City (all of the property, rights, and appurtenances that PCCA agrees to convey referred to as "PCCA Tracts").

ARTICLE 2 CLOSING

Date of Closing

2.01 Subject to the conditions of Paragraphs 2.01 and 2.02, the closing shall occur on or before 90 days from the effective date of this Agreement. The Effective Date of this Agreement is the date this Agreement is signed by the City.

Place of Closing

2.02 The Closing shall be held at the offices of San Jacinto Title Services, 520 Lawrence St, Corpus Christi, Texas.

Obligations at Closing of City Tract

2.03 At the Closing of City Tract the following events shall occur, each being a condition precedent to the other events and each being deemed to have occurred simultaneously with the other events:

(a) City shall deliver to PCCA a duly executed and acknowledged Special Warranty Deed in the form attached hereto and incorporated herein as Exhibit "A" conveying good and marketable title in fee simple to all of City Tract, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions.

(b) The City will provide, at PCCA's expense, a title insurance policy that guarantees good and indefeasible title to the Property, without exceptions to title other than the standard printed exceptions and exceptions permitted under this Contract, and that wholly insures and indemnifies PCCA against any title defects or adverse claims. San Jacinto Title Services, Inc., 520 Lawrence Street, Corpus Christi, TX 78401 ("Title Company") is mutually selected as the Title Company of choice and must issue the title insurance policy. The title commitment for title insurance must be delivered to PCCA within 10 days after receipt of the Contract by the Title Company, with the title insurance policy to be timely issued after Closing.

PCCA must object within 7 days of receipt of title commitment to matters disclosed in the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search.

2.04 All costs and expenses of closing in consummating the transfer of the City tract will be paid by PCCA. This includes the Title Policy, escrow fee, documentation preparation fees and recording fees.

Obligations at Closing of PCCA Tracts

2.05 At the Closing of PCCA Tracts, the following events shall occur, each being a condition precedent to the other events and each being deemed to have occurred simultaneously with the other events:

(a) PCCA shall deliver to City a duly executed and acknowledged Special Warranty Deed in the form attached hereto as Exhibit "A" conveying good and marketable title in fee simple to all of PCCA Tracts, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions. The deed to City by PCCA to contain the right of first refusal language set forth in Exhibit "A".

(b) The PCCA will provide, at City's expense, a title insurance policy that guarantees good and indefeasible title to the Property, without exceptions to title other than the standard printed exceptions and exceptions permitted under this Contract, and that wholly insures and indemnifies City against any title defects or adverse claims. San Jacinto Title Services, Inc., 520 Lawrence Street, Corpus Christi, TX 78401 ("Title Company") is mutually selected as the Title Company of choice and must issue the title insurance policy. The title commitment for title insurance must be delivered to PCCA within 10 days after receipt of the Contract by the Title Company, with the title insurance policy to be timely issued after Closing.

City must object within 7 days of receipt of title commitment to matters disclosed in the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search.

(c) City shall deliver payment of \$3000.00 to PCCA.

2.06 All costs and expenses of closing in consummating the transfer of the PCCA tracts will paid by the City. This includes the Title Policy, escrow fee, documentation preparation fees and recording fees.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

City and PCCA each make the following representations and warranties, all of which will be true and correct as of the date hereof and as of the date of closing.

By City

3.01 City has the absolute and unrestricted right, power and authority to execute and perform its obligations under this Agreement. City has no knowledge of any pending or threatened litigation, condemnation or assessment affecting the City Tract. Except as otherwise provided herein, City has no knowledge that the City Tract contains hazardous materials, underground storage tanks or is not in full compliance with all environmental laws. City has full and complete fee simple title to City Tract, subject only to the liens and encumbrances, if any, disclosed on the Title Commitment. No person, corporation or other entity has or, on the date of Closing, shall have any right or option to acquire the City Tract. City has not received any notice from any governmental agency regarding City's or the City Tract's noncompliance with applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the City Tract.

By PCCA

3.02 PCCA has the absolute and unrestricted right, power and authority to execute and perform its obligations under this Agreement. PCCA has no knowledge of any pending or threatened litigation, condemnation or assessment affecting the PCCA Tract. Except as otherwise provided herein, PCCA has no knowledge that the PCCA Tract contains hazardous materials, underground storage tanks or is not in full compliance with all environmental laws. PCCA has full and complete

fee simple title to PCCA Tract, subject only to the liens and encumbrances, if any, disclosed on the Title Commitment. No person, corporation or other entity has or, on the date of Closing, shall have any right or option to acquire the PCCA Tract. PCCA has not received any notice from any governmental agency regarding PCCA's or the PCCA Tract's noncompliance with applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PCCA Tract.

ARTICLE 4 BREACH OF THIS AGREEMENT

4.01 Breach by City. If City fails to fully and timely perform any of its obligations under this Agreement or fails to consummate the transfer of the City Tract for any reason, except PCCA's default, PCCA may: (1) enforce specific performance of this Agreement or (2) bring suit for damages against City.

4.02 Breach by PCCA. If PCCA fails to fully and timely perform any of its obligations under this Agreement or fails to consummate the transfer of the PCCA Tracts for any reason, except City's default, City may: (1) enforce specific performance of this Agreement or (2) bring suit for damages against PCCA.

ARTICLE 5 MISCELLANEOUS

5.01 This Agreement may not be assigned without the express written consent of City and PCCA.

5.02 Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing of the transactions contemplated by this Agreement, will survive the closing for a period of one (1) year.

5.03 Any notice required or permitted to be delivered under this Agreement will be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to either City or PCCA, as appropriate, at the address set forth in the heading of this Agreement.

5.04 This Agreement will be construed in accordance with the laws of the State of Texas, and all obligations of the parties created under this Agreement are performable in Nueces County, Texas.

5.05 This Agreement will be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns, as permitted by this Agreement.

5.06 In case any one or more of the provisions contained in this Agreement for any reason is held invalid, this invalidity will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had never existed.

5.07 This Agreement constitutes the only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement.

5.08 Time is of the essence in this Agreement.

CITY OF CORPUS CHRISTI


Jeff H. Edmonds, P.E.
Director of Engineering Services

Date

APPROVED AS TO FORM:

Assistant City Attorney

PORT OF CORPUS CHRISTI AUTHORITY



Kent A. Britton
Chief Executive Officer

12/21/2023
Date

EXHIBIT "A"
TO
REAL PROPERTY EXCHANGE AGREEMENT

b. **Exceptions.** Any and all restrictive covenants, easements, and mineral interests, if any, held or owned by others, relating to the Property described herein, but only to the extent they are still in effect and are shown of record in Nueces County, Texas.

c. **Other Matters.** Visible and apparent, but unrecorded easements, if any; rights of parties in possession, if any; prescriptive rights; encroachments or overlapping of improvements; and discrepancies, conflicts or shortages in area or boundary lines; and lack of or impaired access.

d. **Laws and Regulations.** All laws and regulations affecting the Property, including zoning laws, platting laws, environmental laws and municipal and governmental ordinances and regulations, relating to the Property.

e. **Taxes.** The liens for all governmental assessments, standby fees and ad valorem taxes for the year 2024, the payment of which is hereby assumed by Grantee, together with the taxes and lien for subsequent assessments for 2024 and prior years due to change in land usage or ownership, or both, which Grantee also assumes and agrees to pay.

2. **"As Is"**. Grantor conveys the Property and Grantee accepts the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS". Grantor conveys the Property and Grantee accepts the Property "AS IS", "WHERE IS" and "WITH ALL FAULTS". OTHER THAN THE SPECIAL WARRANTY OF TITLE CONTAINED HEREIN, GRANTORS MAKE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE PROPERTY, OR ANY PART THEREOF. By acceptance hereof Grantees waive any and all such warranties, and acknowledge that in no event shall Grantors be liable for any consequential damages. Without limiting the generality of the foregoing, the conveyance of the Property is without any warranty relating to: (a) the condition of the Property or any element thereof, including, without limitation, warranties related to suitability for habitability, merchantability or fitness for a particular purpose; (b) the nature or quality of construction, structural design and engineering of the Property; (c) the quality of the labor and materials included in the Property; (d) the presence of wetlands on the Property; or (e) the soil conditions, drainage, utilities or other conditions existing at the Property with respect to any particular purpose, developmental potential or otherwise. Grantee expressly waives, to the extent allowed by law, any claims under federal, state or other law that Grantee might otherwise have against Grantor relating to the condition of the Property. Grantee further hereby acknowledge that Grantee is relying solely upon Grantee's own physical inspection of the Property and not any statements, oral or written, which may have been made by Grantor or any of Grantor's agents, employees or contractors, in consummating the conveyance of the Property. Grantor is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to in the real estate contract between Grantor and Grantee. Grantee further acknowledges and agrees that this provision was a material factor in the determination of the purchase price for the Property. Grantee waives and releases Grantor and Grantor's successors and assigns from any liability to Grantee and Grantee's successors and assigns, for the condition of the Property, known or unknown, present and future, including liabilities, if any, due to the existence, now or hereafter, of any wetlands, hazardous materials or hazardous substances, on the Property and due to the existence, now or hereafter, of a violation, if any, of any Laws and Regulations.

Section 3 is For Deed From PCCA to City only

EXHIBIT "A"
TO
REAL PROPERTY EXCHANGE AGREEMENT

3. Reservation of right of First Refusal.

a. **Right of First Refusal.** In the event Grantor desires to subsequently sell or otherwise transfer all or any part of its ownership interest in the Property to any person or entity, other than to parent, subsidiary, or affiliate of Grantee, Grantor shall have the option and right to acquire, in the aggregate, the entire ownership interest proposed to be sold or otherwise transferred ("Option Interest") for the same consideration and on the same terms and conditions as agreed upon between the Grantee and the proposed transferee. Grantee shall serve written notice of its intention to sell or otherwise transfer the Option Interest, specifying in full the offer received from a bona fide purchaser or proposed transferee ("Buyer"), including the consideration and other terms thereof, upon Grantor ("Grantee's Notice") at least forty-five (45) days prior to the date on which the intended sale or other transfer is to be consummated. Grantor shall have the option to lease or acquire the Option Interest thereof exercisable by serving written notice of intention to exercise upon Grantee within thirty (30) days after service of the Grantee's Notice. Failure of Grantor to exercise the option shall be conclusively deemed to be an election not to acquire the Option Interest.

b. **Non-cash Consideration.** If the consideration to be paid by the proposed Buyer of the Option Interest shall consist, in whole or in part, of property other than cash, the Grantee shall specify the cash equivalent value of such property in the Grantee's Notice to Grantor. In the case of non-cash consideration, the cash equivalent value shall mean the fair market value of such consideration on the day prior to the day of the Grantee's Notice. In the event of a dispute between Grantor and Grantee of the fair market value of any Non-cash Consideration, Grantor and Grantee shall jointly select an appraiser to appraise the fair market value of any Non-cash Consideration. The appraisal shall be determinative of the value of any Non-cash Consideration. The cost to hire any jointly selected appraiser shall be split equally between the Parties. In the event the parties are unable to agree on an appraiser, then the appraiser shall be appointed by a court of competent jurisdiction.

c. **Time for Completion of Acquisition of Option Interest.** The acquisition of the Option Interest by Grantee shall be fully consummated within sixty (60) days following the date upon which all notices required to be given hereunder have been duly served.

d. **Failure to Exercise Option.** If the Grantor fails to exercise its option to acquire, the Option Interest, then Grantee shall be free to sell or otherwise transfer the Option Interest, upon the terms and conditions set forth in the Grantee's Notice. If such sale or other transfer is not consummated on substantially the same terms and conditions and by the proposed date of transfer specified in the Grantee's Notice, then Grantor's right of first refusal shall be reinstated on the same terms as provided for herein.

e. **Scope of Right of First Refusal.** The provisions of the Right of First Refusal set forth in Section 3 of this deed shall not apply to transfers or conveyances of the Option Interest to a parent, subsidiary, or affiliate of Grantee ("Affiliated Conveyances"); provided however the Right of First Refusal shall be fully binding upon each transferee of Affiliated Conveyances. Notwithstanding the forgoing, Grantee shall notify Grantor of all Affiliated Conveyances by serving Grantor with copies of all Affiliated Conveyances.

f. **Waiver or Modification of Right of First Refusal.** The terms and provisions of section 3 of this Deed may not be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the parties hereto; provided, however, either party may waive in writing a requirement of the other.

EXHIBIT "A"
TO
REAL PROPERTY EXCHANGE AGREEMENT

TO HAVE AND TO HOLD the above described Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, Grantee's successors and assigns, forever; and Grantor hereby binds Grantor, Grantor's successors and assigns, to warrant and forever defend all and singular the Property unto Grantee, Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise (the "special warranty of title"), subject to the Qualifications referenced herein. However, this conveyance is made with full substitution and subrogation of Grantee in and to all covenants and warranties by others heretofore given or made with respect to the Property or any part thereof.

This Special Warranty Deed ("Deed") may be executed in any number of counterparts, all of which shall be construed together as an original instrument to the same extent and with like effect as though all the parties hereto had executed each counterpart. The parties specifically agree that the execution and acknowledgment pages from the several counterparts may be aggregated into one counterpart for recordation and other purposes. If less than all of the parties named herein execute this Deed, then this Deed will nevertheless be effective as to those parties whose signature and acknowledgment pages are attached hereto.

Signature Page Immediately Follows

DATED the ____ day of _____, 2024.

GRANTOR:

By: _____

Printed Name:

Title:

EXHIBIT "A"
TO
REAL PROPERTY EXCHANGE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, _____ of _____, acting on behalf of said _____.

NOTARY PUBLIC, State of Texas

Grantee Signature Page Immediately Follows

EXHIBIT "A"
TO
REAL PROPERTY EXCHANGE AGREEMENT

GRANTEE:

By: _____
NAME, TITLE

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____.

NOTARY PUBLIC, State of Texas

AFTER RECORDING RETURN TO:

GRANTEE'S ADDRESS:

