

Resolution

authorizing the City Manager or designee to execute a disannexation agreement with Chapman Ranch Wind I, LLC, a Delaware limited liability company, for annexed parts of Laureles Farm Tracts adjacent to the City limits located along and on both sides of FM 2444, areas south of FM 2444 and west of County Road 41

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. The City Manager or designee is authorized to execute the attached Disannexation Agreement with Chapman Ranch Wind I, LLC, a Delaware limited liability company, for annexed parts of Laureles Farm Tracts adjacent to the City limits located along and on both sides of FM 2444, areas south of FM 2444 and west of County Road 41 and further is further authorized to execute documents related thereto in a form approved by the City Attorney.

ATTEST:

THE CITY OF CORPUS CHRISTI

Rebecca Huerta
City Secretary

Mayor

Corpus Christi, Texas

_____ of _____, _____

The above resolution was passed by the following vote:

Mayor _____

Rudy Garza _____

Paulette Guajardo _____

Michael Hunter _____

Joe McComb _____

Ben Molina _____

Lucy Rubio _____

Greg Smith _____

Carolyn Vaughn _____

Disannexation Agreement

This Agreement made effective as of February 22, 2017 (the "Effective Date") is by and between the City of Corpus Christi (the "City") and Chapman Ranch Wind I, LLC, a Delaware limited liability company ("Chapman").

WHEREAS, on October 14, 2014, the City annexed parts of Laureles Farm Tracts adjacent to the City limits located along and on both sides of FM 2444, areas south of FM 2444 and west of County Road 41;

WHEREAS, this is not an agreement pursuant to Texas Local Government Code §212.172 and does not constitute a permit pursuant to Texas Local Government Code Chapter 245.

WHEREAS, Chapman is the developer of the Chapman Wind Project, which is located in Nueces County, Texas, in the vicinity of the area depicted as "Restricted Area" in **Exhibit A** and areas adjacent thereto; and

WHEREAS, Chapman owns lease rights to develop, construct and operate wind turbines in the area depicted as the "Restricted Area" in **Exhibit A**.

NOW, THEREFORE, the City and Chapman agree as follows:

1. **Term.** The term of this Agreement shall be **25 years** from the Effective Date (the "Term"). Thereafter, the Agreement shall automatically extend for successive additional 1-year terms unless either party provides the other written notice of non-extension at least 30 days prior to expiration of the then current term. Notwithstanding, this Agreement may be terminated by either party on at least 180 days written notice to the other party, with or without cause, provided that the Agreement cannot be terminated within one year after the Effective Date. Termination prior to the end of the Term other than as prohibited in the foregoing sentence shall not entitle either party to the damages specified in Section 5(C) herein.
2. **Land Uses in Restricted Area.** During the Term of this Agreement, Chapman will not construct, develop or operate any wind turbines in excess of 100 feet in height in the Restricted Area. Further, during the Term of this Agreement, Chapman will not sell, grant or otherwise transfer its rights to construct, develop or operate any wind turbines in excess of 100 feet in height in the Restricted Area. In addition, during the Term of this Agreement, Chapman will not encourage its subsidiaries or affiliates to construct, develop or operate any wind turbines in excess of 100 feet in height in the Restricted Area.
3. **Successors and Assigns.** Chapman's agreement to not sell, grant or otherwise transfer any of its rights to construct, develop or operate any wind turbines in the Restricted Area in excess of 100 feet in height to any other entity shall not limit a sale or change in control of Chapman. In case of such sale or change in control of Chapman, a successor party will continue to be bound to the terms of this Agreement, and shall promptly notify the City of such change in control.
4. **Annexation.** Within the first six (6) months following the Effective Date, the City agrees to disannex the parts of the Restricted Area that are in the City limits of Corpus Christi. City shall not re-annex or annex territory forming part or all of the Restricted Area unless:

- a. Wind turbines exceeding a height of 100 feet are proposed, permitted, or constructed on portions of the restricted area, in which case, the City may annex the tracts of land containing and adjacent to the tracts upon which said wind turbines are proposed and which are necessary to provide utilities to said tracts or provide for contiguity for purposes of annexation.
- b. A landowner or landowners in the Restricted Area requests annexation, in which case the City may annex the tracts of land containing and adjacent to the tracts upon which said annexation is requested and which are necessary to provide utilities to said tracts or provide for contiguity for purposes of annexation.
- c. A landowner or landowners in the Restricted Area develops, subdivides or files a preliminary or final plat for subdivision of his property, in which case, the City may annex the tracts of land developed, subdivided, or subjected to preliminary or final plat and such further tracts of land which are necessary to provide utilities to the subdivided, developed, or platted tracts or provide for contiguity for purposes of annexation.

In the case of annexation pursuant to the foregoing subsections (b) and (c), the City shall provide prior notice to Chapman no later than five (5) business days after receipt of a landowner request or application.

5. General Terms and Conditions:

A. Entire Agreement. This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter hereof.

B. Notice. Any notice to the Chapman or the City concerning the matters to which this Agreement relates may be given in writing by registered or certified mail addressed to Chapman or the City at the appropriate respective addresses set forth below. Chapman must notify the City of any change of address in writing. Notices by a party to the other party hereto, shall be mailed or delivered as follows:

City: City of Corpus Christi
Attn: City Manager.
1201 Leopard Street, 5th Floor
Corpus Christi TX 78401
Phone: 361-826-3220
Fax: 361-826-3845

With Copy to: City of Corpus Christi
Attn: City Attorney
1201 Leopard Street, 5th Floor
Corpus Christi TX 78401
Phone: 361-826-3360
Fax: 361-826-3239

Chapman: Chapman Ranch Wind I, L.L.C.
c/o Enbridge (U.S.) Inc.
1100 Louisiana Suite 3300
Houston, TX 77002
Attn: Corporate Secretary
Facsimile: (713) 821-2229

With Copy to: Enbridge Inc.

200, 425 – 1st Street S.W.
Calgary, AB T2P 3L8

Attention: Vice President, Green Power, Transmission & Emerging Technology

Attention: Vice President, Corporate Law & Deputy General Counsel

Facsimile: (403) 231-7380

Email: legalnotices@enbridge.com

C. Damages, Severability, Waiver. Violation of any portion of this Agreement shall, after affording the defaulting party reasonable notice and opportunity to cure, exempt the other party from performance of its duties pursuant hereto and shall not entitle either party to damages in law or equity except that violation by the City shall entitle Chapman to obtain abatement of any annexation proceedings for a period of up to 365 days and violation by Chapman shall entitle the City to immediately initiate annexation of the Restricted Area. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible. Each of the rights and obligations of the Parties hereto are separate covenants. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not be deemed a waiver of such provision or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

D. Representations and Warranties. Chapman hereby represents and warrants to City as of the Effective Date as follows:

- i. Chapman has acquired lease rights for properties located in the “Restricted Area” of Exhibit A (the “Leases”) which permit Chapman the right to locate above ground wind power facilities on each such property for the duration of each respective Lease. The Leases have an initial operation term exceeding 25 years; and
- ii. Chapman Ranch Wind I, LLC has acquired these lease rights as a result of (a) direct lease agreements with the landholders to certain lands in the Restricted Area; or (b) Memorandum of Assignment and Assumption Agreements with Element Markets, LLC dated as June 1, 2015, but effective May 27, 2010 as recorded in the Nueces County, TX records on July 31, 2015 as Document # 2015029442.

E. Applicable Law and Venue. The laws of the State of Texas govern the interpretation, performance, enforcement and validity of this Agreement. Sole venue will be in a court of appropriate jurisdiction in Nueces County, Texas.

F. Exhibits, Headings. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The section headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the sections.

G. Relationship of Parties. In performing this Agreement, both the City and Chapman will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose.

H. Survival of Terms. All representations, warranties, covenants and agreements of the Parties, as well as any rights and benefits of the Parties pertaining to the transaction contemplated hereby, will survive the original execution date of this agreement.

I. No Third-Party Beneficiary. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over or against any party to this Agreement.

EXECUTED by the PARTIES, both of which hereby represent that the signatures to this AGREEMENT, below, are of those persons with the capacity and authority to legally bind the PARTIES.

City of Corpus Christi

Margie C. Rose
City Manager

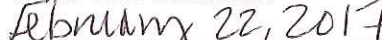
Date

Chapman Ranch Wind I, LLC



Name: Chris Kaitson

Title: Vice President



Date

ATTEST:

Rebecca Huerta
City Secretary

APPROVED AS TO LEGAL FORM:

Buck Brice (Date)
Assistant City Attorney for City Attorney

State of Texas §
County of Nueces §

This instrument was acknowledged before me on this ____ day of _____, 2017 by Margie Rose, as City Manager of the City of Corpus Christi, a Texas municipal corporation, on behalf of said corporation.

Notary Public

State of Texas §
County of Harris §

This instrument was acknowledged before me on this 22nd day of February, 2017 by Chris Kaitson, as Officer of Chapman Ranch Wind I, LLC, a Delaware limited liability company, on behalf of the company.



Michelle R. Williams
Notary Public

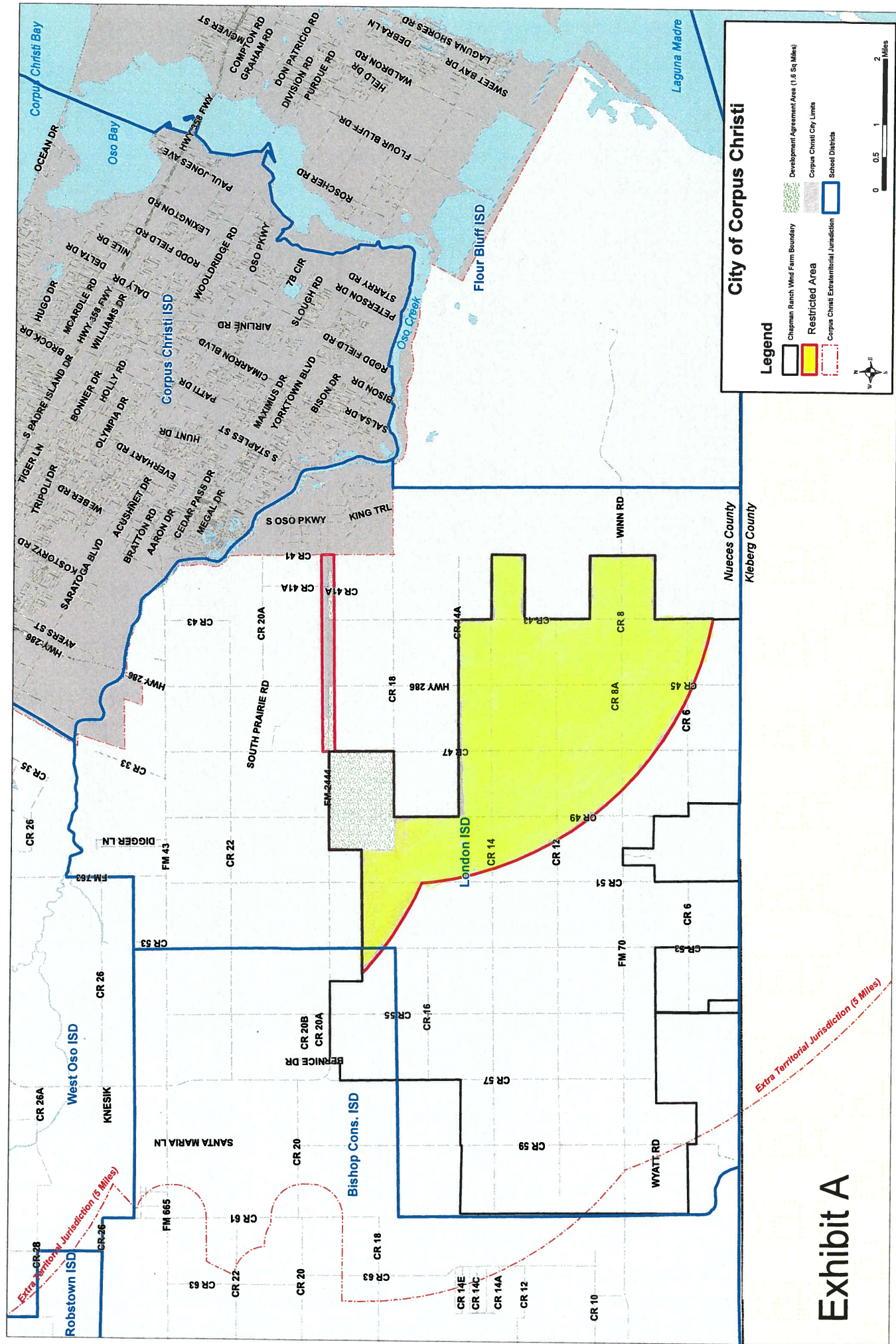


Exhibit A