

CITY CONTRACT # \_\_\_\_\_

**AGREEMENT FOR THE PURCHASE, SALE AND EXCHANGE OF LANDS**

This Agreement for the Purchase, Sale and Exchange of Lands (“Agreement”) is made effective as of the date of execution (“Effective Date”) of the last signing party below, and entered into by and between the City of Cheyenne, Wyoming, a municipal corporation organized under the laws of the State of Wyoming, having its principal offices at 2101 O’Neil Avenue, Cheyenne, Wyoming 82001 (“City”), and Mark Eisele, King Ranch Company, LP, 10333 Happy Jack Road, Cheyenne, Wyoming 82009, (“King Ranch,” “Mark Eisele,” or “Eisele”), and sometimes individually referred to herein as “Party” and collectively as “Parties.”

WHEREAS, the City owns the surface and subsurface estate to lands situated in the NE¼ of Section 23, Township 13 North, Range 68 West of the 6<sup>th</sup> P.M., Laramie County, Wyoming (“Parcel A”), encompassing 20.84 acres, having an appraised value of Fifty-~~Seven~~-Two Thousand Dollars (\$527,000.00), which parcel is particularly described in “Exhibit A – Legal Description and survey of Parcels A and B,” attached to this Agreement and incorporated herein by this reference.

WHEREAS, King Ranch owns a surface and subsurface estate to lands situated in the SW¼ of Section 14, Township 13 North, Range 68 West of the 6<sup>th</sup> P.M., Laramie County, Wyoming (“Parcel B”), encompassing 13.85 acres, 13.85 acres and having an appraised value of Twenty-Seven Thousand Dollars (\$27,000.00), which parcel is particularly described in “Exhibit A – Legal Description and survey of Parcels A and B,” attached to this Agreement and incorporated herein by this reference.

WHEREAS, the City desires to trade Parcel A to King Ranch for Parcel B.

WHEREAS, King Ranch wishes to trade Parcel B to the City for Parcel A.

NOW THEREFORE, in consideration of the mutual benefits and obligations set forth in this Agreement:

1. Purpose of Agreement. Subject to the terms and conditions set forth in Paragraphs 2-15:

- a. The City agrees to sell to King Ranch, and King Ranch agrees to purchase from the City, Parcel A;
- b. The City shall convey Parcel A to King Ranch pursuant to Wyo. Stat. § 15-1-112(b)(ii) (West 2021); and,
- c. King Ranch agrees to trade Parcel B in exchange for Parcel A.

2. Terms of the Agreement.

a. All improvements, structures, and fixtures situated on Parcel A will be conveyed to King Ranch in an “as is” condition without any representations or warranties relating to Parcel A’s physical condition and without ascribing any value to them.

b. The City agrees to trade Parcel A to King Ranch in exchange for Parcel B, all improvements, structures, and fixtures situated on Parcel B will be conveyed to the City in an “as is” condition without any representations or warranties relating to Parcel B’s physical condition and without ascribing any value to them.

c. No money will change hands. Any additional value shall be donated by King Ranch to the City. This transaction is subject to the requirement that King Ranch completes an IRS form W-9 and otherwise cooperates with the City in reporting the Purchase Price and the other terms and conditions of this Agreement to the Internal Revenue Service as required by law. Prior to the date of closing, the parties shall secure the release and discharge of all mortgages, liens, assessments, leases, rental agreements, advertising sign leases, if any, and other claims which encumber the Real Property. The City shall have the right to cancel this Agreement in the event King Ranch is unable or otherwise fails, neglects, or refuses to convey good and marketable title to the City in accordance with the terms and conditions of this Agreement.

3. Payment of Taxes. Prior to closing, King Ranch shall pay, when due and payable, all property taxes and assessments asserted against the Real Property for Parcel B for the current year and for all prior years. All such taxes for the current year shall be apportioned between the Parties on a pro rata basis as of the date of closing.

4. Title.

a. Prior to closing, the City shall have the right to obtain a Title Commitment for Parcel B (the “Title Commitment”) at the City’s sole cost and expense. In the event the Title Commitment shows that King Ranch is not vested with a good, marketable, and insurable fee simple title Parcel B, or that the Real Property is subject to liens, encumbrances, taxes, or assessments which will not be discharged prior to closing, the City shall have the right, in its sole and absolute discretion, to declare this Agreement null and void.

b. Within ten (10) days following the receipt of the Title Commitment from the City, King Ranch shall deliver to the City the following:

i. True, complete, and legible copies of all documents referred to in the Title Commitment to the extent that any such document has not been filed for record in the office of the Laramie County Clerk and ex-officio register of deeds;

ii. True, complete, and legible copies of all documents that are known

to Seller, that are not referred to in the Title Commitment and that may affect the marketability of title to Parcel B;

iii. True and complete copies or originals of any lease or occupancy agreements for any portion of Parcel B;

iv. All mortgages, notes, and loan documents for any mortgage which encumbers Parcel B on the date hereof, which mortgages, notes, and loan documents shall be discharged prior to closing; and

v. Copies of any and all materials relating to pending or present litigation involving Parcel B.

c. The City shall have twenty (20) business days from the date of receipt of the Title Commitment referred to in Section 4 in which to examine the same. If the City finds title to the Real Property to be other than as described in Section 4(a) hereof, the City shall, no later than the expiration of said period of twenty (20) business days, notify King Ranch in writing specifying the defect or defects; provided, that if the City fails to give King Ranch written notice of such defects before the expiration of said period of twenty (20) business days, the defects shown in the Title Commitment or in documents provided by King Ranch shall be deemed to be Permitted Exceptions and waived as title objections. The City may raise as additional objections, however, any defect first shown by any title update between the date of the Title Commitment and the closing date by giving King Ranch written notice of any such defect within five (5) business days after the City first has notice of same. If the City has given King Ranch timely written notice of defects that render the title other than as required by this Agreement (“Defects”), King Ranch shall use their best efforts to cause such Defects to be cured within ten (10) days following receipt of such notice. In the event King Ranch fails to eliminate such Defects, the City shall have the right to terminate this Agreement. In the event King Ranch creates any liens or encumbrances on Parcel B which are capable of being satisfied by the payment of money at the closing, King Ranch shall be obligated to use the Purchase Price, if any, to cure the Defects.

d. The date for elimination of the Defects may be extended until closing. In the event King Ranch does not eliminate any Defect prior to or at closing, as the same may be extended under the preceding provision, the City shall have the option of either: (i) closing and accepting the title “as is,” without reduction in the Purchase Price, or (ii) cancelling this Agreement. In the event of a Defect that was not caused by King Ranch Company LP’s failure to act, King Ranch’s only responsibility shall be to assign to the City King Ranch’s Title Insurance Policy or King Ranch’s rights under King Ranch’s Title Insurance Policy, whichever is applicable, and cooperate with the City in obtaining the assistance of King Ranch’s title insurer to remove the Defect.

e. King Ranch shall not create any new exceptions to title and shall use his best efforts to prevent any other person or entity from creating new exceptions to title to the Real Property prior to closing.

5. Conditions Precedent.

a. The City's obligation to close this transaction shall be subject to fulfillment of the following conditions precedent:

i. King Ranch shall, at King Ranch's sole cost and expense, obtain releases, at or prior to closing, for any and all liens or encumbrances affecting the Real Property pursuant to the terms of this Agreement.

ii. King Ranch shall not be in default in its obligations under this Agreement.

iii. The Escrow Agent, at the expense of the City, shall be prepared to deliver a Title Insurance Policy in a form acceptable to the City ("Title Policy") insuring the City's title to the Real Property in accordance with the terms of this Agreement.

b. In the event any of the foregoing conditions precedent are not fulfilled as of closing (or earlier date where specified otherwise), then the City shall have the option of either: (i) waiving the condition and closing "as is" without reduction in the Purchase Price, provided that King Ranch assigns to the City all of King Ranch's right, title, and interest to the Title Insurance Policy it obtained when it acquired the Property, or (ii) cancelling this Agreement by written notice to King Ranch.

6. King Ranch's Representations and Warranties.

a. King Ranch hereby represents and warrants to the City that the following are true statements as of the date of this Agreement and shall be true as of the date of closing, and King Ranch agrees to deliver a certificate confirming that the following representations and warranties are true as of the date of the closing.

i. King Ranch has full power and authority to sell and convey the Real Property and to execute this Agreement and such other documents described herein.

ii. King Ranch now has, and will have at closing, good, marketable, and indefeasible title in fee simple to the Real Property subject to the Permitted Exceptions and no Party, except as herein set forth, has or shall have any right in, or to acquire, the Real Property.

iii. At closing, the Real Property shall be free and clear of all encumbrances except the Permitted Exceptions as set forth in this Agreement.

iv. At closing, the Real Property shall be free from any and all actions, suits, claims, assessments, or proceedings pending or, to the knowledge of King Ranch, threatened that could materially adversely affect the ownership, operation, or maintenance of the Real Property or King Ranch's ability to perform hereunder.

v. To the best of King Ranch's knowledge, the Real Property and King Ranch are not currently in violation of or subject to: (i) any existing, pending, or threatened investigation or inquiry by any governmental authority; or (ii) any remedial obligations under any applicable laws pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). King Ranch shall have no obligation to remove or take any action to cure or remediate any environmentally hazardous material from the Real Property if any environmentally hazardous material is found on the Real Property.

vi. King Ranch does not have knowledge of any hazardous substances or solid wastes that have been disposed of or otherwise released on the Real Property. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" or "disposed" shall have the meanings specified in RCRA; provided, to the extent that the laws of the State of Wyoming establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" that is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

vii. There are no parties in possession of any portion of the Real Property, whether as lessees, tenants at sufferance, trespassers, or otherwise.

b. King Ranch shall not intentionally cause any of the representations and warranties contained herein to become materially incorrect, nor authorize any action which would do so. If subsequent to the execution of this Agreement and on or before closing, King Ranch nonetheless has knowledge that any of the representations and warranties set forth herein have become incorrect in any respect ("Discrepancy"), King Ranch shall promptly notify the City, in writing, of the occurrence of such event. The City shall have a right to approve or disapprove any such Discrepancy, which approval or disapproval shall be given by written notice delivered to King Ranch within ten (10) days prior to the closing for the City to evaluate the effect of such Discrepancy. If the City

waives such Discrepancy, and elects to acquire the Real Property, King Ranch's representations and warranties contained herein shall be deemed to have been made as of the closing, subject to the waived Discrepancy. If the City disapproves of the Discrepancy, and King Ranch fails to cure same, then upon written notice thereof to King Ranch, this Agreement shall be terminated and all rights and obligations of the Parties hereunder shall terminate.

c. Except for the representations of King Ranch set forth in Section 6 that shall survive for one (1) year from the closing, the express representations and warranties made in this Agreement shall merge into any instrument or conveyance delivered at closing and shall not survive closing.

7. Risk of Loss. The Real Property shall be conveyed to the City in substantially and materially the same condition as on the date this Agreement is executed by the City, ordinary wear and tear excepted.

8. Default Provisions.

a. In the event of the wrongful failure or refusal of the City to close this transaction after sixty (60) days written notice, King Ranch shall be entitled to those remedies as may be provided by law.

b. In the event of King Ranch's failure to close in accordance with the terms and provisions of this Agreement for sixty (60) days after written notice, the City, at its option and as the City's sole and exclusive remedy for default of King Ranch, shall have the right either to terminate this Agreement or seek specific performance of King Ranch's obligations hereunder.

9. Closing Costs and Expenses. At closing, the City shall pay the cost of the Title Insurance Policy to be issued to the City and the cost of the survey, and all recording fees necessary to record instruments received by the City at closing. King Ranch shall pay the recording costs with respect to documents necessary to clear title at closing and all instruments received by King Ranch at closing. The closing agent's fee shall be paid equally by King Ranch and City. Each Party shall pay that Party's attorney's fees, if any.

10. Closing.

a. The closing of this transaction shall be held on \_\_\_\_\_, 2022, after the satisfaction of all the conditions of closing ("Closing Date"). The parties agree that First American Title Company shall prepare the closing documents.

b. At closing, King Ranch shall deliver:

- i. A warranty deed duly executed and acknowledged in proper form for recording conveying to the City good and indefeasible fee simple title in and to Parcel B, subject only to the Permitted Exceptions;
  - ii. An assignment of all rights appurtenant to the Parcel B, if any, as provided above;
  - iii. A title affidavit and a mechanic's lien affidavit;
  - iv. An affidavit of exclusive possession;
  - v. A certificate, or other document as acceptable to the City, confirming King Ranch's authority to sell Parcel B; and,
  - vi. Such other documents as are usually required to insure the City's title.
- c. At closing, the City, at the City's expense, shall deliver:
- i. A warranty deed duly executed and acknowledged in proper form for recording conveying to the City good and indefeasible fee simple title in and to Parcel A, subject only to the Permitted Exceptions;
  - ii. An assignment of all rights appurtenant to Parcel A, if any, as provided above;
  - iii. City shall receive an Owner's Title Insurance Policy in a form acceptable to the City, issued by a Title Insurance Company in the full amount of the Purchase Price, insuring the City's indefeasible fee simple title to Parcel B, subject only to the Permitted Exceptions and the printed exceptions contained in the standard form of King Ranch's Title Insurance Policy.

11. Brokers. The Parties each represent and warrant to the other that no Party to this transaction shall be responsible for the payment of any compensation or commission due any real estate agent, broker, salesman, or finder unless that Party has engaged the real estate agent, broker, salesman, or finder in writing. If a claim for compensation or commission in connection with this transaction is made by any agent, broker, salesman, or finder claiming to have dealt through or on behalf of one of the Parties hereto, such Party shall indemnify, defend, and hold harmless the other Parties hereunder from and against all liabilities, damages, claims, costs, fees, and expenses whatsoever (including reasonable attorney's fees and court costs at all trial and appellate levels) with respect to said claim for compensation or commission. Anything to the

contrary notwithstanding, the provisions of this paragraph shall survive the closing and any cancellation or termination of this Agreement.

12. Assignability. Neither Party shall have the right to assign this Agreement without the express written consent of the other Party.

13. Notices. Any notices required or permitted to be given under this Agreement shall be delivered by hand or mailed by certified or registered mail, return receipt requested, or overnight delivery service in a postage prepaid envelope, and addressed as follows:

If to the City/City: City of Cheyenne  
2101 O'Neil Avenue  
Cheyenne, Wyoming 82001  
ATTN: City Clerk

If to King Ranch: Mark Eisele  
10333 Happy Jack Road  
Cheyenne, Wyoming 82009

14. Operation of the Real Property on Parcel B. During the period between the date hereof and the Closing Date, King Ranch shall:

a. Keep the Real Property in substantially the same repair and condition as of the date hereof, but excluding damages to the Real Property caused by the City's Inspection or the City's use of the Real Property;

b. Comply with all state and municipal laws, ordinances, regulations, and orders relating to the Real Property;

c. Comply with all the terms, conditions, and provisions of all liens, mortgages, agreements, insurance policies, and other contractual arrangements relating to the Real Property, make all payments due thereunder, and suffer no default therein;

d. Without written approval of the City, neither negotiate nor enter into any new contract or modify any existing contract affecting the use or operation of the Real Property which cannot be terminated without charge, cost, penalty, or premium on or before the Closing Date;

e. Operate, manage, and maintain the Real Property in the usual and customary manner for similar property;

f. Promptly notify the City in writing if any material change occurs in the occupancy or conditions affecting the Real Property; and



g. Provide the City and its representatives, employees, and agents full and complete access during normal business hours to the Real Property and adjacent areas as provided in this Agreement.

15. Miscellaneous.

a. This Agreement shall be construed and governed in accordance with the laws of the State of Wyoming. Except for enforcement of the terms and conditions of this Agreement as between the Parties, the City reserves all defenses and immunities under the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et seq.*, and other applicable constitutional and statutory provisions of the State of Wyoming. The venue for any legal proceedings shall be the First Judicial District Court sitting in Laramie County, Wyoming.

b. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

c. Any exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

d. This Agreement constitutes the entire understanding and agreement between the Parties, and there are no understandings, agreements, representations, or warranties except as specifically set forth herein.

e. This Agreement may not be changed, altered, or modified except by an instrument in writing signed by the Party against whom enforcement of such change would be sought.

f. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

g. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by any Party of any condition, or of any breach of any covenant, agreement, representation, or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other covenant, agreement, representation, or warranty.

h. 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 banking holiday, then the time of that period shall be deemed extended to the next day which is not a Sunday, Saturday, or banking holiday. All time periods expiring on a specific date or period herein shall be deemed to expire at 5:00 p.m. Mountain Standard or Mountain Daylight Time, as applicable.

i. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one agreement.

j. During the term of this Agreement, Seller shall not list the Real Property for sale, rent, or exchange or otherwise offer the Real Property for sale, rent, or exchange. Seller shall have the right to disclose this Agreement to any lending institution.

k. City shall accept and cooperate with King Ranch or Eisele's donation of any additional value above the appraised values given to City to the City's benefit as a result of the trade contemplated herein.

*[Signatures on following page]*

In witness thereof, the Parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood, and knowingly and voluntarily agreed to the terms and conditions of this Agreement.

FOR THE CITY/CITY:

\_\_\_\_\_  
Patrick Collins, Mayor

\_\_\_\_\_  
Date

(SEAL)

Attest:

\_\_\_\_\_  
Kristina F. Jones, City Clerk

FOR KING RANCH:

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Mark Eisele  
King Ranch

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Date

*[Notary signatures on following page]*

State of Wyoming )  
 ) ss.  
County of Laramie )

The foregoing instrument was acknowledged before me by Patrick Collins, Mayor of the City of Cheyenne, Wyoming, on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

State of Wyoming )  
 ) ss.  
County of Laramie )

The foregoing instrument was acknowledged before me by Mark Eisele on behalf of King Ranch, on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_