CITY COUNCIL SPECIAL MEETING

Monday, October 21, 2024

Notice is hereby given that the City Council of the City of Big Spring, Texas will meet in Special Session on Monday, October 21, 2024, at 5:30 PM at the City Council Chambers Located at 307 East 4th Street, Big Spring, Texas. **We welcome the public to attend the meeting via telecommunication. Citizens will be able to view the City Council Meeting on Our Local Channel 17 through Suddenlink or on Our Website http://mybigspring.com/224/Channel-17-Live.**

CITY COUNCIL MEETING ETIQUETTE

Gentlemen are requested to remove their hats inside the City Council Chambers. As a courtesy to those in attendance, please place your cell phone on "Silent" or "Vibrate." Please, no talking during the meetings. Take all conversations outside so that others can hear. Thank you!

Open Session

1. Call to Order — Moore

Public Comment

Public Comment – Members of the public are entitled to speak on any topic. Additionally, members of the public may comment on any action item before or during its consideration. Speakers are Requested to Stand at the Podium and State Their Name and Address. Speakers Should Fill out the Form at the Podium and Turn it into the City Secretary. Please Do Not Exceed Five (5) Minutes.

2. **Public Comment** — Moore

New Business

3. Consideration and Possible Action Regarding Agreements with Cross-Ell Ranch Corporation Concerning Economic Development, Annexation and a Development Agreement Concerning a Parcel of Approximately 443.607 Acres, More or Less, Property ID 297545, Located within Section 4, Block 33, Howard County, Texas, Provision of Water and Sewer — Hagen

Utility Services to Certain Parts of the Parcel to be Annexed, Providing a Tax Rebate to Property with Conditions as to Development and Annexation, Accepting a Donation as to Certain Utility Easements in the Vicinity of US Highway 87, Approving an Option to Purchase, Subject to Certain Conditions, a 40 Acre Parcel Abutting US Highway 87 and Frazier Road by the Big Spring Economic Development Corporation including the draft of the purchase agreement should such conditions occur and the option be exercised, and Authorizing the City Manager or His Designee to Execute any Necessary Documents

<u>Council Input</u>

4. Input Moore
5. Adjourn Moore

The City Council reserves the right to meet in executive session on any agenda item should the need arise pursuant to Chapter 551, Subchapter D of the Texas Government Code, or the Texas Disciplinary Rules of Professional Conduct.

I hereby certify that this agenda was posted on the official bulletin board at the City of Big Spring, City Hall Building, located outside 310 Nolan Street. Given by order of the City Council and **Posted on Friday, October 18, 2024 at 4:00 p.m.** in accordance with Title 5, Texas Government Code and Chapter 551.

In addition, this agenda and supporting documents are posted on the City of Big Spring's Website, www.mybigspring.com, in accordance with legal requirements.

Tami L. Davis

Tami L. Davis, City Secretary

THE MEETING FACILITY IS ACCESSIBLE TO DISABLED PERSONS. ANY DISABLED PERSON NEEDING SPECIAL ACCOMMODATION OR A HEARING IMPAIRED PERSON WISHING TO HAVE AN INTERPRETER SHOULD REQUEST SERVICES AT LEAST 48 HOURS PRIOR TO THE SCHEDULED MEETING BY CONTACTINGTAMI DAVIS AT 432-264-2513 OR EMAIL: TDAVIS@MYBIGSPRING.COM.

<u>CROSS-ELL RANCH-BIG SPRING DEVELOPMENT AGREEMENT</u>

This **CROSS-ELL RANCH-BIG SPRING DEVELOPMENT AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the **CITY OF BIG SPRING, TEXAS**, a Texas home-rule municipality (hereinafter referred to as "City" or "the City"), the **BIG SPRING ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as "EDC" or "the EDC"), and **CROSS-ELL RANCH CORPORATION**, a Texas corporation (hereinafter referred to as the "Developer" or "the Developer"):

WHEREAS, the City of Big Spring is a home-rule municipal corporation of the State of Texas; and

WHEREAS, the City anticipates receiving funding in the form of an Economic Development Administration (EDA) Grant, a rapidly funded federal grant managed by the U.S. Economic Development Administration through the American Rescue Plan Act of 2021 which aims to incentivize growth through economic development in communities; and,

WHEREAS, the Developer desires to develop a tract of land described as approximately 443.607 acres located in Howard County, Texas, identified as Property ID # 297545 by the Howard Central Appraisal District, which property is depicted in ***Exhibit "A"*** of this Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Property"); and

WHEREAS, the Developer will petition the annexation of the Property into the City of Big Spring, Texas no later than thirty (30) days after the completion of the Obligations of the City and the Obligations of EDC, as defined hereinbelow; and

WHEREAS, the Developer desires to authorize the EDC to market the Property for development, and if the Property is not sold as a whole within a certain time, to convey, under certain conditions, to the EDC an approximately forty (40) acre tract within the Property for warehouse, manufacturing, or other appropriate uses (further defined herein as the "Option Parcel") pursuant to the terms of an Option Agreement of even date herewith (the "Option Agreement"); and

WHEREAS, the EDC and Developer have obtained an appraisal of the Option Parcel; and

WHEREAS, except as provided herein, the Developer shall grant, at no cost to the City, all necessary easements to the City for roads, water and sewer lines to be installed to service the Property as Public Infrastructure, as stated herein; and

WHEREAS, the City will cause to have constructed and installed on the Property water and sewer lines to service the Property; and

WHEREAS, the EDC is a Type A economic development corporation operating pursuant to Chapter 504 of the Texas Local Government Code, as amended, and the Texas Non-Profit Corporation Act, as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, Section 504.105 of the Texas Local Government Code authorizes the EDC to spend Type A Sales and Use Tax Revenue (as defined herein) for promotional purposes; and

WHEREAS, the EDC's Board of Directors have determined that this Agreement is authorized by Section 504.105 of the Texas Local Government Code; and

WHEREAS, the City has agreed to create a Tax Increment Reinvestment Zone encompassing the Property to create funds for further reinvestment into the Project if feasible; and

WHEREAS, the Project includes significant public infrastructure improvements, such as the construction of public roads and other traffic improvements, the construction of water, sewer and other utility infrastructure, and the construction of drainage improvements; and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution, and Section 380.001 of the Texas Local Government Code ("Section 380"), the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; provided the program created or loan or grant made is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City; and

WHEREAS, the City, EDC, and Developer agree that the provisions of this Agreement substantially advance a legitimate interest of the City by providing public infrastructure, expanding the tax base of the City, increasing employment, and promoting economic development.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the EDC, and the Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be enforceable as of the Effective Date, as defined herein, and shall continue thereafter until the expiration or termination of the 380 Agreement unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

380 Agreement. The "380 Economic Development And Performance Agreement" agreed to by Developer and City.

Agreement. The word "Agreement" means this Development Agreement and Performance Agreement, authorized by Chapters 501 and 504 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any, and any amendments to this Agreement and/or exhibits and schedules.

City. The word "City" means the City of Big Spring, Howard County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City's address is 310 Nolan Street, Big Spring, Texas 79720.

Days shall mean calendar days, whether capitalized or not, unless stated otherwise.

Developer. The word "Developer" means Cross-Ell Ranch Corporation, a Texas corporation, its successors and assigns. For the purposes of this Agreement, Developer's address is 975 Rio Hondo Rd, Tarpley, TX 78883-4413.

EDC. The term "EDC" means the Big Spring Economic Development Corporation, a Type A economic development corporation, and a Texas non-profit corporation, its successors and assigns, whose corporate address for the purposes of this Agreement is 215 W. Third Street, Big Spring, Texas 79721.

Effective Date shall mean the date in which the Agreement is effective, which is the date the Agreement is executed by and on behalf of the parties.

Event of Default. The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."

Infrastructure Improvements shall have the same meaning as "Public Infrastructure" herein.

Maximum Listing Price. The words "Maximum Listing Price" shall mean Thirty Million and No/100 Dollars ($30,000,000.00) unless the EDC Board of Directors give prior approval of a higher amount, which approval shall not be unreasonably withheld, conditioned, or delayed. The Maximum Listing Price may be separately adjusted under the terms of Subsection 4(b)(3). Notwithstanding the foregoing, under no circumstances shall Developer be obligated to accept any offer for all or any portion of the Property, other than an exercise by the EDC of its option to purchase the Option Parcel.

Option Parcel. The words "Option Parcel" means the forty (40) acre tract of land located in within the Property, and within Howard County, Texas, and which is described and depicted in ***Exhibit "B"*** of this Agreement, which is attached hereto and incorporated herein for all purposes.

Project shall mean the development of the Property and associated Public Infrastructure within the Property or adjacent to the Property. The Project shall consist of the Project, as well as other ancillary facilities, including, but not limited to, areas developed for roads, parking, drainage, landscaping, and open space.

Property. The word "Property" means the approximately 443.607-acre tract of land located in Howard County, Texas, which property is described and depicted in ***Exhibit "A"*** of this Agreement, which is attached hereto and incorporated herein for all purposes.

Public Infrastructure shall mean the improvements constructed by the City including, but not limited to, utility infrastructure, drainage facilities, and other infrastructure as may be illustrated in ***Exhibit "C"*** which is attached hereto and incorporated herein for all purposes. The term "Public Infrastructure" shall be limited to the investments stated in Section 5(c) of this Agreement, and exclude the additional Airport-investments as stated in the illustration attached to Exhibit C.

Term. The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

Tax Year shall mean January 1st of any given calendar year through December 31st of the same calendar year.

SECTION 4. OBLIGATIONS OF THE DEVELOPER.

The Developer covenants and agrees while this Agreement is in effect it shall comply with the following terms and conditions:

(a) **Request Annexation of the Property.** Developer covenants and agrees it is the owner of the Property which is adjacent to the city limits of the City of Big Spring, Texas. In addition, Developer covenants and agrees to submit an annexation petition to the City, using a form substantially similar to the Annexation Request Form in Exhibit "D," which is attached hereto and incorporated herein for all purposes, and agree to a Service Plan substantially similar to the Service Plan in Exhibit "S," which is attached hereto and incorporated herein for all purposes, requesting that the Property be annexed into the City of Big Spring, Texas, no later than thirty (30) days after the completion of the Obligations of the City and the Obligations of EDC, as defined hereinbelow.

(a-1) In the event that Howard County calls for an election which may result in sales tax assessed in the unincorporated areas of Howard County, Cross-Ell agrees to immediately request annexation and complete annexation prior to the election taking place. The City represents to Developer that it has no knowledge that Howard County currently has such a plan.

(b) **Reasonable Access to Option Parcel, and Appraisal and Sale of Property.**

1. Developer covenants and agrees to provide to the EDC or EDC's agents reasonable access to the Option Parcel in order for the EDC to conduct an evaluation of the Option Parcel, pursuant to the terms of the Access Agreement attached hereto as ***Exhibit "E"*** which is attached hereto and incorporated herein for all purposes.

2. In addition, Developer covenants and agrees and does hereby authorize the EDC and the City to market or cause to be marketed for sale the Property for commercial redevelopment for no more than the Maximum Listing Price. Sale of the entire Property by Developer does not need the approval of the City Council of the City of Big Spring, Texas, or the EDC Board of Directors if the other conditions of this Agreement are met.

   i. It is understood and agreed that in any sale of all or any portion of the Property, Developer or Developer's assignee will retain and not convey the minerals and groundwater owned by Developer. The term "minerals" shall mean all oil, gas, and other minerals in or under and that may be produced from the Property, any royalty under any existing or future mineral lease covering any part of the Property, executive rights (including the right to sign a mineral lease covering any part of the Property), implied rights of ingress and egress, exploration and development rights, production and drilling rights, mineral lease payments, and all related benefits. If the Property is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it. The minerals do NOT include sand, gravel, limestone, building stone, caliche, surface shale, near-surface lignite, and iron. Seller will also retain the right to continue the use of the existing well sites on the surface of the Property. Apart from the existing well sites, Seller will agree to waive all other surface rights relating to the minerals, including the right to access, explore, drill, mine, or otherwise utilize or disturb any other part of the Property in any way. Notwithstanding the foregoing, nothing herein contained shall ever be construed to prevent Seller from developing or producing oil, gas and other minerals that may be produced from the Property by pooling or by directional or horizontal drilling under the Property from well sites located or mines that open on lands other than the Property, or from the existing well sites on the Property as of the date of this Agreement.

3. **Notwithstanding the foregoing statement of the Maximum Listing Price, Developer may, at any time whether once or more, at Developer's sole cost and expense, engage an independent, certified general appraiser, licensed by the Texas Appraiser Licensing & Certification Board (the "Licensed Appraiser") to appraise the Property. In the event Developer elects to engage a Licensed Appraiser, Developer shall notify the EDC of its election and shall provide the**

EDC and City with a sworn statement executed by the Licensed Appraiser providing the licensing information for, and certifying to the independence of, such Licensed Appraiser all in a form and substance reasonably acceptable to the EDC. Upon completion of the appraisal the Licensed Appraiser shall deliver a copy of the "Appraisal" to the Developer, EDC, and City. If the Appraisal shows that the Property value is greater than the Maximum Listing Price, then the Maximum Listing Price shall be adjusted to reflect such increase, without need of additional approval or consent by the EDC. Nothing in this Agreement shall be construed to obligate Developer to accept an offer for the purchase of the Property for an amount less than the Maximum Listing Price.

4. Developer covenants and agrees that it will not subdivide the Property during the term of the Option Agreement except with the written prior approval of the EDC Board of Directors, which approval shall not be unreasonably withheld, conditioned, or delayed. If the Developer subdivides the Property during the term of the Option Agreement, it may not sell the Option Parcel except to the EDC pursuant to the terms of the Option Agreement. This subsection 4(b)(4) does not apply to any conveyance pursuant to the Option Agreement for Option Parcel Between Developer and EDC. Any subdivision of the Property, save and except for any conveyance pursuant to the Option Agreement for Option Parcel Between Cross-Ell Ranch Corporation and Big Spring Economic Development Corporation, shall be subject to prior mutual agreement by the Developer and EDC of the Maximum Listing Price and any change thereto. This subsection 4(b)(4) expires two years after the Developer conveys the Option Parcel to the EDC, if applicable.

5. After the expiration of the Option Agreement, Developer may sell the Option Parcel without encumbrance or need for additional consent or approval.

6. In no event will EDC be construed to be a successor or assign of Developer under this Agreement.

(c) **Option Agreement.** Developer will enter into the Option Agreement for Option Parcel between Developer and Big Spring Economic Development Corporation as material consideration for the EDC's and the City's execution of this Agreement.

(d) **Assistance with Infrastructure Improvements.** Developer covenants and agrees to donate to the City all necessary easements or rights-of-way for the installation of roads, water, and sanitary sewer lines to the Property pursuant to Section 5(c) of this Agreement (collectively, the "Rights of Way"). In addition, Developer covenants and agrees that, upon the City's agreement to deliver utilities to the portion of the Property west of the Highway 87 Reliever Route, and to fund the delivery of said utilities at the City's expense, Developer will execute any and all documents necessary to donate or convey to the City the existing sleeves, bores, casings, and conduit (the "Existing Utility Improvements"), including any existing or necessary easements or rights of way thereto located under Highway 87 Reliever

Route and adjacent to the Property for the water and sanitary sewer lines to be installed on the Property pursuant to Section 5(c) of this Agreement. In exchange for Developer's donation of the Rights of Way and the Existing Utility Improvements, the City will cooperate with Developer in the execution of a donation agreement or other similar instrument acknowledging the value of the donation at an amount equal to the value of the Rights of Way and the value added to the Property by the Existing Utility Improvements, or other such instrument requested by Developer in order to allow Developer to receive credit for the donation for tax reporting purposes. This donation is incidental to this Agreement. Collectively, the easements, rights-of-way, drainage facilities, and other improvements will be conveyed to and accepted by the City on an as is, where is basis. The added value of the Existing Utility Improvements shall be based upon the average of three quotes from contractors which commonly bore conduit under highways.

(e) Consistent with the Subdivision Ordinances of the City and a mutually agreeable plan for the location and construction of the Infrastructure Improvements (defined below), Developer shall dedicate all required easements, rights of way, and drainage facilities necessary for the development of the property, at the time required under the Subdivision Ordinance.

(f) The grants of easements and dedication of rights-of-way shall be in a form mutually acceptable to Developer and the City.

(g) **Performance.** The Developer agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and the Option Agreement for Option Parcel between Developer and Big Spring Economic Development Corporation.

SECTION 5. OBLIGATIONS OF THE CITY.

The City covenants and agrees while this Agreement is in effect the City shall comply with the following terms and conditions:

(a) **Annexation of the Property.** City covenants and agrees that upon receipt of an annexation petition from the Developer pursuant to Section 4(a) of this Agreement, the City shall commence the process for annexation of the Property into the city limits of the City of Big Spring, Texas, consistent with Chapter 43 of the Texas Local Government Code, as amended.

(b) **Zoning of the Property.** City covenants and agrees that upon annexation of the Property into the City or simultaneously with the annexation, the City shall zone the Property consistent with the City's Comprehensive Zoning Plan and Zoning Ordinance, and prepare a master site development plan for the Property (including the Option Parcel) reasonably acceptable to Developer, contemplated to designate portions of the Property for light industrial, commercial, retail, and office/warehouse uses, and ensuring that all of the Property is served with utilities, roads, drainage, cross-access easements to and from all public rights-of-way adjacent to the existing boundaries of the Property, and which maximizes the development potential of the Property. The Property shall not be put to any residential uses whatsoever. The parties to this Agreement agree that the City is not contracting for, or promising to, approve the zoning change and that the City retains its complete lawful discretion to approve or deny the zoning change based on the level of discretion provided to the City by law for the particular decision under consideration. Nothing in this Agreement is or should be considered or construed as contract zoning or the bargaining away of the City's governmental discretion.

(c) **Infrastructure Improvements to the Property.** City covenants and agrees within 36 months after the Effective Date, the City shall have installed or cause to be installed on the Property or for the benefit of the Property water, sanitary sewer, and one lift station and infrastructure appropriate for the Property, and as depicted in ***Exhibit "C***," which is attached hereto and is incorporated herein for all purposes (the "Infrastructure Improvements"). The City shall be responsible for **three Million, seven hundred thousand and No/100 Dollars ($3,700,000.00) of the total cost of the Infrastructure Improvements.** The EDC shall not be responsible for any combined amount in excess of **four hundred thousand and No/100 Dollars ($400,000.00). The City's statement that Infrastructure Improvements are complete shall be presumptive proof that they are complete, subject to rebuttal by Developer.**

(d) **Waiver of Fees.** The City agrees to waive all plat application fees, impact fees, dedication fees, parkland fees, and other applicable development fees associated with the platting and subdivision of the Property. This waiver does not apply to building permit fees and utility connection fees.

(e) **Performance**. The City agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City, EDC, and Developer.

SECTION 6. OBLIGATIONS OF EDC.

The EDC covenants and agrees while this Agreement is in effect the EDC shall comply with the following terms and conditions:

(a) **Advertising the Property.** Upon annexation of the Property into the city limits of the City of Big Spring, Texas, consistent with Section 5(a) of this Agreement, EDC covenants and agrees to use best efforts to market or cause to be marketed for sale the Property for commercial redevelopment in a manner consistent with the marketing of similarly situated industrial tracts for economic development purposes. The EDC shall indemnify, defend, and hold harmless Developer, its shareholders, directors, officers, employees, agents, attorneys and representatives from and against any and all claims of any nature whatsoever arising from or relating to the EDC's marketing of and activities on the Property, including without limitation, advertising liability.

(b) **Performance**. The EDC agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and any other agreements by and between the City, EDC, and Developer.

SECTION 7. EVENT OF DEFAULT.

(a) **General Event of Default.** Failure of Developer, EDC, or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer, EDC, or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between the Developer, EDC and City is an Event of Default.

(b) **False Statement**s. Any warranty, representation, or statement made or furnished to the City or EDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished, is an Event of Default.

(c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.

(d) **Dispute Resolution**

1. Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties in dispute shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties in dispute agree to try in good faith to settle the dispute by mediation under the Mediation Rules of the American Arbitration Association before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party in dispute with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. The Parties in dispute shall notify the Party not in dispute of any scheduled mediation at least fourteen (14) days prior to the mediation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation and mediation, collectively known as alternate dispute resolution ("ADR") shall be assessed equally between the City and the Party in dispute with each party bearing

their own costs for attorneys' fees, experts, and other costs of ADR and any ensuing litigation. Any Party not directly in dispute shall receive notice at least thirty days prior of any scheduled meditations.

2. During the Term of this Agreement, if Developer files and / or pursues an adversarial proceeding against the City regarding this Agreement then, at the City's option, all access to the Grants to that Developer provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest-bearing account until the resolution of such adversarial proceeding.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

Failure of the Developer, City, or EDC to comply with or perform any term, obligation or condition of this Agreement shall constitute an Event of Default. The non-defaulting party shall give written notice to the other parties of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party or parties shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. If specific performance is awarded against a party, that party shall pay the other party's attorney's fees and court costs in bringing the action.

In the event the City defaults on its obligations under a 380 Economic Development and Performance Agreement of even date herewith and executed by and between the City and Developer, or in the event the EDC defaults on its obligations under the Option Agreement, and such default(s) remain uncured after any applicable notice and cure period, Developer may elect, in its sole discretion, to terminate this Agreement by providing written notice to the City and EDC.

SECTION 9. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. The Parties may, by mutual written agreement, amend this agreement. Such amendments shall be incorporated into and made a part of this agreement.

(b) **Applicable Law and Venue.**

1. This Agreement, and all claims or causes of action (whether in contract, implied contract, tort, equity or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Texas, including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

2. Any legal suit, action, or proceeding arising out of or based upon/relating to this Agreement or the transactions contemplated hereby or shall be exclusively filed and adjudicated in state courts sitting in Taylor County, Texas. Service of process, summons, notice, or other document by certified mail shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) **Assignment.** Except as stated within this subsection, Developer shall have the right to assign all of its rights, duties, and obligations under this Agreement for all or any part of the Property to an entity owned or controlled by Developer, or owned and controlled by principals of Developer, or to a duly qualified third party, with prior written notice to the EDC. An assignee shall assume all of the obligations and responsibilities, as well as receive the benefits, of the Developer assigning its portion of the Agreement with respect to the portion of the Property to which the assignment relates. The assignor shall be relieved of all obligations and responsibilities relating to its respective portion of the Agreement with respect to which the assignment is made, provided the assignor delivers to the EDC an agreement between itself and the assignee documenting the assignment and assignee's agreement to perform such responsibilities and obligations. Assignments beyond the scope specified above are conditioned on the pre-approval by the EDC.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The EDC warrants and represents that the individual executing this Agreement on behalf of the EDC has full authority to execute this Agreement and bind the EDC to the same. The Developer warrants and represents that the individual executing this Agreement on the Developer's behalf has full authority to execute this Agreement and bind the Developer to the same.

(e) **Interpretation.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) **Entire Agreement.** This Agreement together with any and all related Exhibits incorporated by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. The Parties have not relied on any statement, representation, warranty, or agreement of the other Party or of any other person on such Party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Agreement.

(h) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, , the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed. Force Majeure: shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government, or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions, floods, strikes, slowdowns, or work stoppages.

(i) **Notices.** Any notice, submittal, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To the City:	City of Big Spring, Texas 310 Nolan Street Big Spring, Texas 79720 Attn: Todd Darden, City Manager
With a copy to:	City of Big Spring, Texas Legal Department / 150 310 Nolan Street Big Spring, Texas 79720 Attn: Andrew W. Hagen, City Attorney
To the EDC:	Big Spring Economic Development Corporation 215 W. Third Street Big Spring, Texas 79721 Attn: Mark Willis, Executive Director
To the Developer:	Cross-Ell Ranch Corporation 975 Rio Hondo Rd Tarpley, TX 78883-4413 Attn: Mack Frazier
With a copy to:	Baird, Crews, Schiller & Whitaker, P.C. 15 North Main Street Temple, Texas 76501 Attn: Sam Fulcher

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

(j) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

(k) **Form 1295 Certificate.** Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

(l) **Undocumented Workers Provision.** Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120th day after the date the City or EDC notifies Developer of the violation.

(m) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.

(n) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

(o) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) full-time employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

(p) **Verification Against Discrimination Developer Does Not Boycott Energy Companies.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) full-time employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.

(q) **Non-Waiver of Governmental Immunity.**

(a) The City of Big Spring expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

(b) Nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

(c) Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

(d) Except as specified herein, the EDC expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Section 504.107, Texas Local Government Code; and any other law, if applicable.

(e) Except as specified herein, nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the EDC's liability beyond any statutory limitation of liability.

(f) Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the EDC which would otherwise be barred under the doctrine of governmental immunity or operation of law.

(g) No employee of City or EDC, or any councilmember or agent of City, or board member or agent of EDC, shall be personally responsible for any liability arising under or growing out of this Agreement.

(r) **Miscellaneous Representations and Warranties**

(1) Each Party to this Agreement represents that it has the power and authority to enter into this Agreement and that all documents executed and delivered pursuant to this Agreement are valid, binding, and enforceable upon such Party. Each Party further represents that there are no outstanding parties nor any additional signatories required for the execution of this Agreement.

(2) Developer represents that it is authorized to do business and is in good standing in the State of Texas and warrants that it shall remain in good standing in the State of Texas during the Term of this Agreement.

(s) **Independent contractors.**

It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as agents of the City and that all consultants or contractors engaged by Developer respectively will be independent contractors of the Developer; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by each Developer respectively under this Agreement, unless any such claims are due to the fault of the City.

(t) **Further Assurances.**

Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

<u>CITY</u>:

CITY OF BIG SPRING, TEXAS,
A Texas home-rule municipality

By: ________________________________
Todd Darden, City Manager
Date: ______________________________

ATTEST:

____
Tami L. Davis, City Secretary

STATE OF TEXAS §
§
COUNTY OF HOWARD §

This instrument was acknowledged before me on the _____day of ____________________ _______, 2024, by Russell T. Darden, City Manager of the City of Big Spring, Texas, a Texas home-rule municipality, on behalf of said municipality.

____
Notary Public, State of Texas

EDC:

BIG SPRING ECONOMIC DEVELOPMENT CORPORATION,
A Texas non-profit corporation

By: ________________________________
Anna Scott, President
Date: ______________________________

ATTEST:

____
Joel De La Garza, Secretary

STATE OF TEXAS §
§
COUNTY OF HOWARD §

This instrument was acknowledged before me on the _____day of ____________________ _______, 2024, by Anna Scott, President of the Big Spring Economic Development Corporation, a Texas non-profit corporation, on behalf of said Texas non-profit corporation.

____
Notary Public, State of Texas

<u>DEVELOPER</u>:

CROSS ELL RANCH CORPORATION,
a Texas corporation,

By: ________________________________
Name: ______________________________
Title: _______________________________
Date: _______________________________

STATE OF TEXAS §
§
COUNTY OF ________________ §

This instrument was acknowledged before me on the _____day of ____________________ _______, 2024, by ______________________, _______________________of the Cross Ell Ranch Corporation, a Texas corporation, on behalf of said corporation.

____
Notary Public, State of Texas

Exhibit A
Property

The Property is 443.607 acres, more or less, in Section 4, Block 33, Howard County, Texas, conveyed to Cross-Ell Ranch Corporation by Special Warranty Deed dated October 30, 1986, and recorded in volume 610, pages 591-592 of the real property records of Howard County, Texas, as follows:

> The West 532 acres of Section 4, Block 33, TWP 1 South, T&P Railroad Company Survey, Howard County, Texas;

Save for and Except each of the following:

> Those three tracts together containing 17 acres, more or less, and described in a Warranty Deed recorded in volume 610, pages 593-595 in the real property records of Howard County, Texas;
>
> Those three tracts, of 2.02 acres, the second of 10.0 acres, and the third of 0.21 acres, more or less, and described in a Warranty Deed dated November 15, 1988, recorded in volume 624, page 42 of the real property records of Howard County, Texas;
>
> That tract of 9.214 acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1356, pages 680-686 of the real property records of Howard County, Texas; and
>
> That tract of 40.089 Acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1360, pages 164-173 of the real property records of Howard County, Texas; and
>
> Those two tracts, one of 5.37 acres and the other of 3.51 acres, more or less, described in a Warranty Deed dated July 26, 2017, recorded in volume 1644, pages 582-585 of the real property records of Howard County, Texas.

Exhibit B

Option Parcel

That 40.0 acre tract of land, with four sides of 0.25 mile in length each, located within the "Property," where the term "Property" is defined in the EDA, and at the northeast corner of Frazier Road and US Highway 87, in Howard County, Texas, including all rights appurtenant with respect to any strips and gores abutting the tract, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the tract, to the center line thereof.

Exhibit C

Public Infrastructure Improvements

See attached "City of Big Spring Business Park/Airpark Water and Sewer Improvements American Rescue Plan – EDA Grant Project Map August 2023

Exhibit D

PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

TO THE MAYOR OF THE GOVERNING BODY OF THE CITY OF BIG SPRING, TEXAS:

The undersigned owners of the hereinafter described tract of land petition your honorable Body to extend the present city limits so as to include as part of the City of Big Spring, Texas, the following described territory, to wit:

The Property is 443.607 acres, more or less, in Section 4, Block 33, Howard County, Texas, conveyed to Cross-Ell Ranch Corporation by Special Warranty Deed dated October 30, 1986, and recorded in volume 610, pages 591-592 of the real property records of Howard County, Texas, as follows:

The West 532 acres of Section 4, Block 33, TWP 1 South, T&P Railroad Company Survey, Howard County, Texas;

Save for and Except each of the following:

Those three tracts together containing 17 acres, more or less, and described in a Warranty Deed recorded in volume 610, page 593 in the real property records of Howard County, Texas;

Those three tracts, of 2.02 acres, the second of 10.0 acres, and the third of 0.21 acres, more or less, and described in a Warranty Deed dated November 15, 1988, recorded in volume 624, page 42 of the real property records of Howard County, Texas;

That tract of 9.214 acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1356, pages 680 of the real property records of Howard County, Texas; and

That tract of 40.089 Acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1360, pages 164-173 of the real property records of Howard County, Texas; and

Those two tracts, one of 5.37 acres and the other of 3.51 acres, more or less, described in a Warranty Deed dated July 26, 2017, recorded in volume 1644, pages 582-585 of the real property records of Howard County, Texas.

We certify that the above described tract of land is contiguous and adjacent to the City of Big Spring, Texas, and that this petition is signed and duly acknowledged by each and every person having an interest in said land.

Signed: ____________________________________

Signed: ____________________________________

Signed: ____________________________________

THE STATE OF TEXAS

COUNTY OF ____

BEFORE ME, the undersigned authority, on this day personally appeared _____________________________________, ___________________________, and _____________________________________, known to me to be the persons whose names are subscribed to the foregoing instrument and each acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this _______ day of ________________, 20___.

____
Notary Public in and for
_________________ County, Texas.

Exhibit E

Access Agreement on
Following Pages

Exhibit S

See attached Service Plan

CITY OF BIG SPRING, TEXAS
AND
CROSS-ELL RANCH CORPORATION
380 ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT

This **380 ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT** (hereinafter referred to as the "**Agreement**") is made and entered into by and between the **CITY OF BIG SPRING, TEXAS**, a Texas home-rule municipality (hereinafter referred to as "City" or "the City"), and **CROSS-ELL RANCH CORPORATION**, a Texas corporation (hereinafter referred to as the "Developer" or "the Developer"):

WHEREAS, the Texas Legislature is authorized under the Texas Constitution to provide for the programs for grants, including for public money, to develop and diversify the economy of the state, reducing unemployment and underemployment, and developing and expanding transportation and commerce in the State, Tex. Const. Art. III, § 52-a; and

WHEREAS, the Texas Legislature has authorized the governing body of a municipality to establish programs for the grants of money to promote state and local economic development, stimulating business and commercial activity in the municipality, Tex. Local Gov't Code § 380.001; and

WHEREAS, the City of Big Spring is a home-rule municipal corporation of the State of Texas; and

WHEREAS, the City Council of Big Spring is the governing body of the City of Big Spring; and

WHEREAS, the City anticipates receiving funding in the form of an Economic Development Administration Grant, a rapidly funded federal grant managed by the U.S. Economic Development Administration through the American Rescue Plan Act of 2021 which aims to incentivize growth through economic development in communities; and,

WHEREAS, the City Council of Big Spring wishes to authorize this Agreement; and

WHEREAS, the Developer, the City, and the **BIG SPRING ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as "EDC" or "the EDC"), have executed that certain Cross-Ell Ranch-Big Spring Development Agreement of even date herewith (the "EDA"); and

WHEREAS, the Developer desires to the develop a tract of land described as approximately 443.607 acres located in Howard County, Texas, identified as Property ID # 297545, which property is generally depicted in ***Exhibit "A"*** of this 380 Agreement, which is attached hereto and incorporated herein for all purposes (hereinafter referred to as the "Property"); and

WHEREAS, the Developer will petition to have the Property annexed by the City of Big Spring in pursuit of the development project, provided that the City and EDC perform their respective obligations set out in this Agreement and the EDA; and

WHEREAS, the City will annex the Property pursuant to the terms of the EDA; and

WHEREAS, the City will cause to have constructed and installed on the Property water and sewer lines to service the Property; and

WHEREAS, the City has agreed to create a Tax Increment Reinvestment Zone encompassing the Property to create funds for further reinvestment into the Project if feasible; and

WHEREAS, the Project includes significant public infrastructure improvements as detailed on Exhibit C and including, without limitation, the construction of public roads and other traffic improvements, the construction of water, sewer and other utility infrastructure, and the construction of drainage improvements, the completion of which represents material consideration for Developer's consent to enter in this Agreement; and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution, and Section 380.001 of the Texas Local Government Code ("Section 380"), the City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City; provided the program created or loan or grant made is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City; and

WHEREAS, the City and Developer agree that the provisions of this Agreement substantially advance a legitimate interest of the City by providing public infrastructure, expanding the tax base of the City, increasing employment, and promoting economic development.

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

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be enforceable as of the Effective Date, as defined herein, and shall continue thereafter for the life of the Tax Increment Reinvestment Zone hereinafter provided up to and until such Tax Increment Reinvestment Zone is terminated or otherwise ceases to exist, but in any event no longer than Twenty-Five (25) years after the Effective Date, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

Agreement. The word "Agreement" means this 380 Development Agreement and Performance Agreement, authorized by Section 380, together with all exhibits and schedules attached to this Agreement from time to time, if any, and any amendments to this Agreement and/or exhibits and schedules.

Annual Grant Payment. 100% of the City Ad Valorem Tax for the Undeveloped portions of the Property.

City. The word "City" means the City of Big Spring, Howard County, Texas, a Texas home-rule municipality. For the purposes of this Agreement, City's address is 310 Nolan Street, Big Spring, Texas 79720.

City Ad Valorem Tax. means the City's ad valorem tax rate, which is $0.673163 per $100 of assessed property value in the City of Big Spring for tax year 2022, as authorized by Section 6.01 of the Texas Tax Code. For purposes of this Agreement, the City Ad Valorem Tax rate shall automatically be updated to reflect any changes to the City's ad valorem tax rate.

Days shall mean calendar days, whether capitalized or not, unless stated otherwise.

Developer. The word "Developer" means Cross-Ell Ranch Corporation, a Texas corporation, its successors and assigns. For the purposes of this Agreement, Developer's address is 975 Rio Hondo Rd, Tarpley, TX 78883-4413.

Effective Date. shall mean the date in which the Agreement is effective, which is the date the Property is annexed to the City of Big Spring.

Event of Default. The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."

First Grant Period shall mean the period beginning on January 1 and ending on December 31 for the year in which this Agreement is executed.

Grant(s) shall collectively mean the Ad Valorem Tax Reimbursement Grants to be paid to a Developer as set forth herein; subject, however, at all times, to the Maximum Grant Amount (as defined below).

Grant Period shall mean each successive one (1) calendar year period, starting with the First Grant Period.

Maximum Grant Amount shall mean the amount in a given year Developer pays to City in ad valorem tax for Property while this Agreement is in effect.

Payment Request shall mean a written request from Developer(s) to the City for payment of the applicable Grant for the applicable Grant Period.

Project shall mean the development of the Property and associated Public Infrastructure within the Property or adjacent to the Property. The Project shall consist of the Project, as well as other ancillary facilities, including, but not limited to, areas developed for roads, parking, drainage, landscaping, and open space.

Property. The word "Property" means the approximately 443.607-acre tract of land located in Howard County, Texas, which property is described and depicted in ***Exhibit "A"*** of this Agreement, which is attached hereto and incorporated herein for all purposes.

Public Infrastructure shall mean the improvements constructed by the City including, but not limited to, utility infrastructure, drainage facilities, and other infrastructure as may be illustrated in ***Exhibit "C"*** which is attached hereto and incorporated herein for all purposes. The term "Public Infrastructure" shall be limited to the investments stated in Section 5(c) of this Agreement, and exclude the additional Airport-investments as stated in the illustration attached to Exhibit C.

Term. The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

TIRZ shall mean Tax Increment Reinvestment Zone as provided under Section 5(b) of this Agreement.

Tax Year shall mean January 1st of any given calendar year through December 31st of the same calendar year.

Undeveloped shall mean any portion, parcel, or subdivision of the Property that has not had a Certificate of Occupancy issued.

SECTION 4. OBLIGATIONS OF THE DEVELOPER.

The Developer covenants and agrees while this Agreement is in effect it shall comply with the following terms and conditions:

(a) **Development Agreement.** Developer will enter into the "Cross-Ell Ranch-Big Spring Development Agreement" with the City of Big Spring, Texas and the Big Spring Economic Development Corporation as a condition precedent of this Agreement.

(b) **Intentionally Omitted.**

(c) **Performance**. The Developer agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, the Cross-Ell Big Spring Development Agreement, and the Option Agreement for Option Parcel between Developer and Big Spring Economic Development Corporation (the "Option Agreement").

(d) Developer agrees to provide to City with copies of Developers receipts for paid property taxes on the Property.

SECTION 5. OBLIGATIONS OF THE CITY.

The City covenants and agrees while this 380 Agreement is in effect the City shall comply with the following terms and conditions:

(a) **Ad Valorem Taxes on the Property.** For the tax year starting after the Effective Date and for a maximum period of ten (10) consecutive years, the City shall have the duty of paying to the Developer the Annual Grant Payment for the Undeveloped portions of the Property, except that if the Property is separated into multiple parcels, each parcel is subject to a separate Annual Grant Payment. The City's duty to pay any amount of the Annual Grant Payment has as a condition precedent Developer's payment of City Ad Valorem Tax according to state and municipal law. The payment by the City shall be due no earlier than March 31 of the year, and no later than 30 days after Developer submits information and documents to the City as required. The duty of the City under this subsection expires for each parcel subdivided from the Property by plat or by deed when a certificate of occupancy is issued for a structure located on such subdivided parcel. The duty of the City under this subsection expires upon the payment of the Annual Grant Payment made for the tax year ten years after the Effective Date. In the event that a parcel of the Property is merged with another parcel that was outside of the Property, the duty of the City under this` subsection would be determined on a proportionate and equitable basis. For each parcel of the Property upon which a Certificate of Occupancy has been issued, such parcel shall not be subject to the Annual Grant Payment and shall be subject to the TIRZ according to this Agreement.

(b) **Tax Increment Reinvestment Zone for the Property.** Contingent upon the Property satisfying the requirements for the creation of a tax increment financing reinvestment zone ("TIRZ") contained in Section 311.005 of the Texas Tax Code, and Article VIII, § 1-g of the Texas Constitution, and within 120 days of the Effective Date of the annexation of the Property, the City covenants and agrees to commence a city-initiated TIRZ for the Property consistent with Chapter 311 of the Texas Tax Code. Further, the City covenants and agrees to use its best efforts to request Howard County, Texas, to participate in a TIRZ for the Property. Moreover, the City covenants and agrees upon the creation of the TIRZ for the Property said zone shall have a term of twenty-five (25) years.

(c) **Performance.** The City agrees to perform and comply with all terms, conditions and provisions set forth in this Agreement, and the Cross-Ell Big Spring Development

Agreement.

(d) **Interpretation.** This Section 5 shall be interpreted cumulatively.

SECTION 6. RESERVED.

SECTION 7. EVENT OF DEFAULT.

(a) **General Event of Default.** Failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or City to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between the Developer and City is an Event of Default.

(b) **False Statements**. Any warranty, representation, or statement made or furnished to the City by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished, is an Event of Default.

(c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.

(d) **Dispute Resolution**

1. Mediation. If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties in dispute shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties in dispute agree to try in good faith to settle the dispute by mediation under the Mediation Rules of the American Arbitration Association before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party in dispute with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. The Parties in dispute shall notify the Party not in dispute of any scheduled mediation at least fourteen (14) days prior to the mediation. Notwithstanding the foregoing, any Party may seek immediate equitable relief, without attempting to settle a dispute through mediation, in any case where such Party is entitled to equitable relief by law, the terms of the Agreement, or otherwise. All costs of negotiation and mediation, collectively known as alternate dispute resolution ("ADR") shall be assessed equally between the City and the Party in dispute with each party bearing their own costs for attorneys' fees, experts, and other costs of ADR and any ensuing litigation. Any Party not directly in dispute shall receive notice at least thirty days prior of any scheduled

meditations.

2. During the Term of this Agreement, if Developer files and / or pursues an adversarial proceeding against the City regarding this Agreement then, at the City's option, all access to the Grants to that Developer provided for hereunder may be deposited with a mutually acceptable escrow agent that will deposit such funds in an interest-bearing account until the resolution of such adversarial proceeding.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

Failure of the Developer or City to comply with or perform any term, obligation or condition of this Agreement shall constitute an Event of Default. The non-defaulting party shall give written notice to the other parties of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. Should said default remain uncured, the non-defaulting party or parties shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default.

If the City defaults on its obligations hereunder, or if the City or EDC default on their respective obligations under the EDA, including without limitation, the failure to create the TIRZ, provide the grants to reimburse Developer for its ad valorem taxes, and the failure to deliver utilities to the Property, within three (3) years of the date of this Agreement, Developer may elect to terminate this Agreement by providing written notice to the City. Additionally, if, for any reason, the EDA or the Option Agreement is terminated due to a default by the City or the EDC with respect to the EDA or Option Agreement, Developer may, in its sole discretion, elect to terminate this Agreement by providing written notice to the City and EDC of such election.

SECTION 9. INDEMNIFICATION.

TO THE EXTENT ALLOWED BY LAW, EACH PARTY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER (AND ITS OFFICERS, AGENTS, AND EMPLOYEES) FROM AND AGAINST ALL CLAIMS OR CAUSES OF ACTION FOR INJURIES (INCLUDING DEATH), PROPERTY DAMAGES (INCLUDING LOSS OF USE), AND ANY OTHER LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO OR RESULTING FROM ITS PERFORMANCE UNDER THIS AGREEMENT, OR CAUSED BY ITS NEGLIGENT ACTS OR OMISSIONS (OR THOSE OF ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, OR ANY OTHER THIRD PARTIES FOR WHOM IT IS LEGALLY RESPONSIBLE) IN CONNECTION WITH PERFORMING THIS AGREEMENT.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. The Parties may, by mutual written agreement, amend this Agreement. Such amendments shall be incorporated into and made a part of this Agreement.

(b) **Applicable Law and Venue.**

1. This Agreement, and all claims or causes of action (whether in contract, implied contract, tort, equity or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Texas, including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

2. Any legal suit, action, or proceeding arising out of or based upon/relating to this Agreement or the transactions contemplated hereby or shall be exclusively filed and adjudicated in state district courts sitting in Taylor County, Texas. Service of process, summons, notice, or other document by certified mail shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) **Assignment.** Except as stated within this subsection, Developer shall have the right to assign all of its rights, duties, and obligations under this Agreement for all or some of the Property to an entity owned or controlled by Developer or by principals of Developer, or to a duly qualified third party, with prior written notice to the City. An assignee shall assume all of the obligations and responsibilities, as well as receive the benefits, of the Developer assigning its portion of the Agreement with respect to the portion of the Property to which the assignment relates. An assigning Developer shall be relieved of all obligations and responsibilities relating to its respective portion of the Agreement with respect to which the assignment is made, provided the assigning Developer delivers to the City an agreement between itself and the assignee documenting the assignment and assignee's agreement to perform such responsibilities and obligations. In addition, a Developer may assign its rights to receive payment under this Agreement to a lender, and upon receipt of such assignment in writing by the City, and the City's further receipt of a written notice from such lender to pay such lender directly, the City will deliver amounts owing to such Developer hereunder to such lender (payable to such lender) until such time such lender authorizes otherwise in writing, and City shall be entitled to rely on any such assignment, notice and/or authorization without investigation. Assignments beyond the scope specified above are conditioned on the pre-approval by the City Council of Big Spring.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Developer warrants and represents that the individual executing this Agreement on the Developer's behalf has full authority to execute this Agreement and bind the Developer to the same.

(e) **Interpretation.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) **Entire Agreement.** This Agreement together with any and all related Exhibits incorporated by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to the subject matter. The Parties have not relied on any statement, representation, warranty, or agreement of the other Party or of any other person on such Party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Agreement.

(h) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, , the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed. Force Majeure: shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government, or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions, floods, strikes, slowdowns, or work stoppages.

(i) **Notices.** Any notice, submittal, payment or instrument required or permitted by this Agreement to be given or delivered to any party shall be deemed to have been received when personally delivered or 72 hours following deposit of the same in any United

States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To the City:	City of Big Spring, Texas 310 Nolan Street Big Spring, Texas 79720 Attn: Todd Darden, City Manager
With copies to:	City of Big Spring, Texas Legal Department / 150 310 Nolan Street Big Spring, Texas 79720 Attn: Andrew W. Hagen, City Attorney
	Big Spring Economic Development Corporation 215 W 3rd Street Big Spring, Texas 79720 Attn: Mark Willis, Executive Director
To the Developer:	Cross-Ell Ranch Corporation 975 Rio Hondo Rd Tarpley, TX 78883- 4413 Attn: Mack Frazier
With a copy to:	Baird, Crews, Schiller & Whitaker, P.C. 15 North Main Street Temple, Texas 76501 Attn: Sam Fulcher

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

(j) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

(k) **Form 1295 Certificate.** Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Agreement, a duly executed completed Form 1295 Certificate.

(l) **Undocumented Workers Provision.** Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement to Developer plus six percent (6.0%), not later than the 120th day after the date the City notifies Developer of the violation.

(m) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars ($100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Agreement on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of this Agreement.

(n) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

(o) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) full-time employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.

(p) **Verification Against Discrimination Developer Does Not Boycott Energy Companies.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) full-time employees and this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds of the City, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of this Agreement.

(q) **Non-Waiver of Governmental Immunity.**

(a) The City of Big Spring expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

(b) Nothing in this Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

(c) Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

(d) No employee of City, or any councilmember or agent of City, shall be personally responsible for any liability arising under or growing out of this Agreement.

(r) **Miscellaneous Representations and Warranties**

(1) Each Party to this Agreement represents that it has the power and authority to enter into this Agreement and that all documents executed and delivered pursuant to this Agreement are valid, binding, and enforceable upon such Party. Each Party further represents that there are no outstanding parties nor any additional signatories required for the execution of this Agreement.

(2) Developer represents that it is authorized to do business and is in good standing in the State of Texas and warrants that it shall remain in good standing in the State of Texas during the Term of this Agreement.

(s) **Independent contractors.**

It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, Developer at no time will be acting as agents of the City and that all consultants or contractors engaged by Developer respectively will be independent contractors of the Developer; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by each Developer respectively under this Agreement, unless any such claims are due to the fault of the City.

(t) **Further Assurances.**

Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

[The Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

<u>CITY</u>:

CITY OF BIG SPRING, TEXAS,
A Texas home-rule municipality

By: ________________________________
Todd Darden, City Manager
Date: ______________________________

ATTEST:

____
Tami L. Davis, City Secretary

<u>DEVELOPER</u>:

CROSS ELL RANCH CORPORATION,
a Texas corporation

By: ______________________________
Name: ____________________________
Title: _____________________________
Date: _____________________________

Exhibit A

The Property is 443.607 acres, more or less, in Section 4, Block 33, Howard County, Texas, conveyed to Cross-Ell Ranch Corporation by Special Warranty Deed dated October 30, 1986, and recorded in volume 610, pages 591-592 of the real property records of Howard County, Texas, as follows:

> The West 532 acres of Section 4, Block 33, TWP 1 South, T&P Railroad Company Survey, Howard County, Texas;

Save for and Except each of the following:

> Those three tracts together containing 17 acres, more or less, and described in a Warranty Deed recorded in volume 610, pages 593-595 in the real property records of Howard County, Texas;
>
> Those three tracts, of 2.02 acres, the second of 10.0 acres, and the third of 0.21 acres, more or less, and described in a Warranty Deed dated November 15, 1988, recorded in volume 624, page 42 of the real property records of Howard County, Texas;
>
> That tract of 9.214 acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1356, pages 680-686 of the real property records of Howard County, Texas; and
>
> That tract of 40.089 Acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1360, pages 164-173 of the real property records of Howard County, Texas; and
>
> Those two tracts, one of 5.37 acres and the other of 3.51 acres, more or less, described in a Warranty Deed dated July 26, 2017, recorded in volume 1644, pages 582-585 of the real property records of Howard County, Texas.

Exhibit C

Public Infrastructure Improvements

See attached "City of Big Spring Business Park/Airpark Water and Sewer Improvements American Rescue Plan – EDA Grant Project Map August 2023

**CROSS ELL RANCH CORPORATION-BIG SPRING
DONATION AGREEMENT**

This Cross Ell Ranch-Big Spring Donation Agreement (the "Donation Agreement") dated October 9, 2024 between the **CITY OF BIG SPRING, TEXAS**, a Texas home-rule municipality ("Donee"), and **CROSS-ELL RANCH CORPORATION**, a Texas corporation ("Donor") for a certain easement or easements described hereinafter and is effective upon the first date stated above (the "Effective Date").

Whereas, the City of Big Spring is a "political subdivision," 26 U.S.C. § 170, of the State of Texas; and

Now therefore the Donor and Donee mutually agree as follows.

A. At the time of Donee's choosing, provided that the conditions precedent described hereinbelow have been satisfied, the Donor hereby shall grant as a charitable contribution to Donee one or more easements, all of which are described as follows, and which may hereinafter referred to as the "Donated Easements."

> The existing easements or rights of way located under Highway 87 Reliever Route and adjacent to the Donor's property for provision of utility services for the public and the municipality.

B. The Donor and Donee agree that Donee may cause at Donee's expense one or more surveys of the Donated Easements to be performed by registered land surveyors duly licensed by the State of Texas.

C. Annex 1 is hereby incorporated and attached to this Donation Agreement.

D. Upon completion of the survey or surveys, Donee will provide full and complete access for the purpose of conducting the survey or surveys to Donor and Donor's agents. Upon the sooner of Donor granting consent to the survey or surveys, which shall not be unreasonably withheld, or the passage of ten (10) business days, by mutual agreement the said survey or surveys will be attached and incorporated into this Donation Agreement as Exhibit A to Annex 1. Upon such, the term "Donated Easements" in this Donation Agreement shall refer to Exhibit A to Annex 1.

E. Within thirty (30) days of Exhibit A being attached to this Donation Agreement under the terms stated above, or upon the Donee's Request, Donor will execute a deed in substantially the form as included in this Annex 1, which shall include Exhibit A to Annex 1, conveying the Donated Easements to Donee.

F. Donee is given a full and complete opportunity to conduct its own investigation as to any matter, fact or issue that might influence Donee's decision to accept the Donated Easements from Donor. Accordingly, Donee is willing to accept the Donated Easements from Donor without any representations or warranties whatsoever regarding the Donated Easements and on an "as is, where is" and "with all faults" basis.

G. The Donor hereby promises within thirty (30) days of the Effective Date, with extensions that may be granted upon the discretion of the City Manager of Donee, to execute a deed in the form substantially the same as stated in Annex 1, and the Donee shall accept and be the successor to all such rights and interests in, the Donated Easements identified and described herein. For clarification, the deed of the Donated Easements shall only convey the easement estate pertaining to the Donated Easements, with the following exceptions to warranty: the rights of the owners of the mineral estate in the Donated Easements; all easements, rights-of-way and prescriptive rights; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, agreements and maintenance charges, and other instruments, other than liens and conveyances, that affect the Donated Easements; any discrepancies, conflicts or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations and other matters emanating from and existing by reason of the creation, establishment, maintenance and operation of any County Water Improvement District, Municipal Utility District or similar governmental or quasi-governmental agency; all laws, ordinances, rules, and regulations applicable to the Donated Easements; and existing building and zoning ordinances and environmental regulations. This provision is not intended to, and does not, validate or reinstate a terminated or otherwise invalid instrument or right.

H. Donor and Donee agree that the title company will be selected by Donor. If the title company selected by Donor fails to perform reasonably and promptly, however, Donee may send notice to Donor that Donee is substituting its own title company for closing.

I. Donee will receive title insurance.

J. Closing costs and the costs of title insurance will be paid by Donee.

K. Eminent Domain. In the event that the Donor's interest in the Donated Easements, or any part thereof, shall have been taken by eminent domain, or shall be in the process of being taken on or before the Closing Date, either Party may terminate the Donation Agreement and neither Party shall have any further rights or liabilities hereunder.

L. Donee shall choose the closing date, which shall be reasonable. The closing date must be no later than one year after the Effective Agreement. After closing is complete and the deed is recorded, this Donation Agreement terminates. Notwithstanding the foregoing, as a condition precedent to closing on the donation of the Donated Easements to Donee, Donor, Donee and, when applicable, BIG SPRING ECONOMIC DEVELOPMENT CORPORATION, must have executed, in final form, the following documents:

i. Cross-Ell Ranch – Big Spring Development Agreement,

ii. City of Big Spring, Texas and Cross-Ell Ranch Corporation 380 Economic Development and Performance Agreement,

iii. Option Agreement for Option Parcel between Cross-Ell Ranch Corporation and Big Spring Economic Development Corporation,

iv. Donor and Donee have agreed, in writing, on the value of the Donated Easements.

M. Entire Donation Agreement. This Donation Agreement contains the entire Donation Agreement between the parties concerning the Donation and sale of the Donated Easements, and supersedes all prior written or oral Donation Agreements between the parties to this Donation Agreement. No addition to or modification of any term or provision shall be effective unless in writing, signed by both Donor and Donee.

N. This Donation shall be governed by the laws of the State of Texas.

O. Successors and Assigns. This Donation Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

P. Partial Invalidity. If any portion of this Donation Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Donation Agreement and the remaining parts shall remain in full force as fully as though the invalid, illegal or unenforceable portion had never been part of this Donation Agreement.

Q. Termination. Prior to the Closing Date, this Donation Agreement may be terminated by Donor at any time for any or no reason by written notice to Donee.

R. Any legal suit, action, or proceeding arising out of or based upon/relating to this Agreement or the transactions contemplated hereby or shall be exclusively filed and adjudicated in state courts sitting in Taylor County, Texas. Service of process, summons, notice, or other document by certified mail shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

S. No Third Parties Benefits. No person other than Donor and Donee, and their permitted successors and assigns, shall have any right of action under this Donation Agreement.

T. Waivers. No waiver by either party of any provision shall be deemed a waiver of any other provision or of any subsequent breach by either Party of the same or any other provision.

U. Assignment. No assignment of the duties or rights of this Donation Agreement will be valid unless mutually agreed by the Parties in writing.

V. Counterparts. To facilitate execution, this Donation Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

W. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Grantor warrants and represents that the individual executing this Agreement on the Grantor's behalf has full authority to execute this Agreement and bind the Grantor to the same.

X. Notice. Each Party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "**Notice**") in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section.

To Grantor:	Cross-Ell Ranch Corporation 975 Rio Hondo Rd Tarpley, TX 78883-4413 Attn: Mack Frazier
With a copy to:	Baird, Crews, Schiller & Whitaker, P.C. 15 North Main Street Temple, Texas 76501 Attn: Sam Fulcher
To Grantee:	Todd Darden, City Manager 310 Nolan Street Big Spring, Texas 79720
with a copy to:	Andrew Hagen, City Attorney 310 Nolan Street Big Spring, Texas 79720

Y. Non-Waiver of Governmental Immunity.

(a) The City of Big Spring, a Texas municipal corporation, expressly retains all rights and benefits of governmental immunity from liability and suit for damages in accordance with: Title 5, Texas Civil Practice and Remedies Code; Subchapter I, Chapter 271, Texas Local Government Code; and any other law, if applicable.

(b) Nothing in this Donation Agreement shall be deemed as a waiver of governmental immunity or as increasing the City of Big Spring's liability beyond any statutory limitation of liability.

(c) Nothing in this Donation Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of Big Spring which would otherwise be barred under the doctrine of governmental immunity or operation of law.

Z. Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

<signature page follows>

DEVELOPER	**CITY**
CROSS ELL RANCH CORPORATION, a Texas corporation	**CITY OF BIG SPRING**, a Texas Municipal Corporation
____________________________ R. Mack Frazier President	_______________________ Todd Darden City Manager
	APPROVED AS TO FORM ONLY
	_______________________ Andrew W. Hagen City Attorney

ANNEX 1

See attached document.

OPTION AGREEMENT FOR OPTION PARCEL
between
CROSS-ELL RANCH CORPORATION
and
BIG SPRING ECONOMIC DEVELOPMENT CORPORATION

This OPTION AGREEMENT FOR OPTION PARCEL (this "**Agreement**"), dated as of the ___ day of ____________, 2024 (the "**Effective Date**"), is entered into between Cross-Ell Ranch Corporation, a Texas corporation having an address at 975 Rio Hondo Rd, Tarpley, Texas 78883-4413 ("**Optionor**"), and Big Spring Economic Development Corporation, a Texas non-profit corporation having an address at 215 West Third Street, Big Spring, Texas 79720 ("**Optionee**" or "**EDC**").

WHEREAS, Optionor is the owner of that certain real property located at the northeast corner of Frazier Road and US Highway, which is particularly described in the Exhibit A attached hereto (the "**Option Parcel**"); and

WHEREAS, Optionor wishes to grant to Optionee, and Optionee wishes to obtain from Optionor, an irrevocable and exclusive option to purchase the Option Parcel, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the Option Consideration (defined below) and the other mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Option.** Subject to Optionee's timely payment of the Option consideration, Optionor hereby grants to Optionee an exclusive and irrevocable option to purchase the Option Parcel.

2. **Option Term.** The term of the Option (the "**Option Term**") shall commence only upon the following conditions precedent: (i) in the event one or more third-party has not purchased or entered into a contract to purchase the entire "Property," as defined in the Cross-Ell Big Spring Development Agreement, on or before October 1, 2026, and (ii) the completion of the Obligations of the City (as defined in the EDA and 380 Agreement, defined below). If and when the Option Term begins, Optionor covenants and agrees to convey the Option Parcel to the EDC by special warranty deed for a purchase price calculated as follows: upon Optionee notifying Optionor of its election to exercise the option granted pursuant to this Agreement, Optionor shall within sixty (60) days engage an independent, certified general appraiser, licensed by the Texas Appraiser Licensing & Certification Board (the "Licensed Appraiser") to appraise the value of the Option Parcel (i) prior to the completion of Obligations of the City and the Obligations of EDC (as defined in an Cross-Ell Ranch-Big Spring Development Agreement of even date herewith (the "EDA") and the Obligations of the City defined in the 380 Economic Development and Performance Agreement and executed by and between the City and Optionor (the "380 Agreement"), collectively, the "Obligations"), and (ii) after the completion of the Obligations. Optionor agrees to share the full appraiser's report with EDC. The purchase price will be the appraised value of the Option Parcel after the completion of the Obligations. The

purchase price will be payable as follows: the difference between the value of the Option Parcel before and after completion of the Obligations will be credited toward the purchase price as a donation from Optionor to Optionee. The remaining balance of the purchase price, being equal to the appraised value of the Option Parcel prior to the completion of the Obligations (the "**Cash Price**") shall be payable to Optionor by EDC in cash at closing. The parties agree to add the purchase price to Section 3.01 of the Purchase Agreement prior to executing the Purchase Agreement. The Option Parcel shall be conveyed to Optionee at closing free and clear of all liens and encumbrances. If the condition of the Option Term occurs but the EDC does not exercise the option and purchase the Option Parcel, the Option Term will automatically expire at 5:00 p.m. (CST) on December 31, 2027 (the "**Option Termination Date**"). After expiration of the Term, if Optionee has not exercised its option granted hereunder, Optionor may sell the Option Parcel to any third party without encumbrance and without need for any additional writing.

3. **Optionee Survey.**

Should EDC at its own cost cause a survey of the Option Parcel to be performed by a surveyor licensed in the State of Texas, addressed to EDC and Optionor. The survey shall describe a tract of land in conformance to Exhibit A herein, and upon completion of such survey, the survey will supersede and replace the description provided on Exhibit A.

4. **Option Consideration.**

(a) The Option is granted in consideration of the Big Spring Economic Development Corporation having entered into the Cross-Ell Big Spring Development Agreement.

(b) Optionee acknowledges and agrees that the Option Consideration constitutes consideration to Optionor for Optionor's agreement to: (i) enter into this Agreement with Optionee; (ii) not sell the Option Parcel to another purchaser during the Option Term; and (iii) sell the Option Parcel to Optionee on the terms and conditions and for the Purchase Price in the Purchase Agreement (defined below), provided that Optionee has exercised the Option in the manner provided in Section 5 below. The Option Consideration shall be non-refundable to Optionee.

5. **Exercise of Option.** At any time during the Option Term, after full and final completion of the Obligations of the City and the Obligations of EDC (as defined in the EDA and the 380 Agreement, the completion of which is a condition precedent to Optionee's exercise of the Option), and provided there exists no uncured default by the City or EDC with respect to the EDA and 380 Agreement, Optionee may exercise the Option by timely sending Optionor a written notice of Optionee's election to exercise the Option (the "**Exercise Notice**") in the manner prescribed in Section 8, accompanied by three (3) executed copies of the Purchase and Sale Agreement in the form attached hereto as Exhibit C (the "**Purchase Agreement**"). Optionor shall, not later than 45 days after receipt of the Exercise Notice, execute the Purchase Agreement and return two (2) fully executed originals to Optionee. If Optionee does not timely exercise the Option in the manner described herein on or before the Option Termination Date, the option will automatically terminate and Optionor shall be entitled to retain the Option

Consideration. Thereafter, neither party shall have any further obligations hereunder, except for those that expressly survive termination of this Agreement.

6. **Obligation to Maintain.** Throughout the Option Term, Optionor will maintain the Option Parcel in its existing condition and will not make any major removals, alterations, or changes thereto, except as may be required by law, or as agreed in writing between Optionor and Optionee.

7. **Default by Optionor.** If Optionor fails to perform any of its obligations, or is otherwise in default hereunder, Optionee shall have the right to terminate this Option Agreement, seek specific performance, and/or seek such other relief Optionee may have at law or in equity, including, without limitation, seeking injunctive relief to prevent a sale of the Option Parcel to a party other than Optionee.

8. **Termination of EDA or 380 Agreement.** In the event the EDA or the 380 Agreement is terminated due to a default of the City or Optionee, and such default remains uncured after any applicable notice and cure periods, Optionor may elect, in its sole discretion, to terminate this Agreement by providing written notice to Optionee, and such termination shall be effective without need of any additional writing. In such event, Optionor may execute an instrument without the joinder of the City or Optionee declaring that this Agreement has been terminated and record the instrument in the real property records of Howard County, Texas.

9. **Memorandum of Option Agreement.** This Agreement will not be recorded. Concurrently with the execution and delivery of this Agreement, Optionor and Optionee shall each execute and acknowledge a Memorandum of Option Agreement in the form attached as Exhibit B, which Optionee, at its sole cost and expense, may record in the Recorder's Office of Howard County, Texas.

10. **Notices.** Any notice, submittal, payment or instrument required or permitted by this Agreement to be given or delivered as follows:

To Optionor:

Cross-Ell Ranch Corporation
975 Rio Hondo Rd
Tarpley, TX 78883-
4413
Attn: Mack Frazier

With a copy to:
Baird, Crews, Schiller & Whitaker, P.C.
15 North Main Street
Temple, Texas 76501
Attn: Sam Fulcher

To Optionee: Big Spring Economic Development Corporation
215 W. Third Street
Big Spring, Texas 79721
Attn: Mark Willis, Executive Director

Any party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

11. Any notice to either party related to or arising out of this Agreement must be given by one the following methods: (a) overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; or (b) registered or certified mail, postage prepaid, return receipt requested, whereby delivery is deemed to have occurred on the fifth business day following deposit with the United States Postal Service.

12. **Representations and Warranties of Optionor.** Optionor makes the following representations and warranties to Optionee as of the Effective Date:

(a) Validity. Optionor is a corporation duly organized and existing, and qualified to do business in the State of Texas, and it has full right, power and authority to carry on its business and to execute, deliver and perform, comply with and consummate the terms of this Agreement and the documents referenced herein to which Optionor is or shall be a party (the "**Optionor Closing Documents**").

(b) Due Authority. The execution and delivery of this Agreement has been duly authorized, and prior to the Closing, Optionor Closing Documents and the performance of Optionor's obligations hereunder and thereunder shall have been duly authorized.

(c) No Litigation. There is no actual, pending or threatened violation, action or proceeding by any organization, person, individual or governmental agency against Optionor with respect to the Property or against the Property (or any portion thereof), or which would affect the Property or Optionor's ability to perform its obligations hereunder.

(d) No Notice of Violation of Law. Optionor has received no written or oral notice from any governmental or quasi-governmental entity that the Property is in violation of any Laws.

(e) No Bankruptcy. Optionor is not party to any voluntary or involuntary proceedings in bankruptcy, reorganization or similar proceedings under the Federal bankruptcy laws or under any state laws relating to the protection of debtors, or subject to any general assignment for the benefit of the creditors, and no such action has been threatened.

(f) Non-Foreign Status; Withholding. Optionor is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended and the Regulations promulgated pursuant thereto. Optionor's sale of the Property is not subject to any federal, state or local withholding obligation of Optionee under the tax laws applicable to Optionor or the Property.

13. **Representations and Warranties of Optionee.** Optionee makes the following representations and warranties to Optionor as of the Effective Date:

(a) Validity. Optionee is a nonprofit corporation duly organized and existing under the laws of its jurisdiction and qualified (or will be qualified prior to Closing) to do business in the State of Texas, and it has full right, power and authority to carry on its business and to execute, deliver and perform, comply with and consummate the terms of this Agreement and the documents referenced herein to which it is or shall be a party (the "Optionee Closing Documents").

(b) Due Authority. The execution and delivery of this Agreement has been duly authorized, and prior to the Closing, Optionee Closing Documents and the performance of Optionee's obligations hereunder and thereunder shall have been duly authorized.

14. **Miscellaneous.**

(a) Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties. Any assignment by Optionee of Optionee's rights or obligations under this Agreement may only be made with Optionor's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. No transfer or other assignment of rights or obligations under this Agreement shall release Optionee from any of its obligations or liabilities under this Agreement.

(b) Legal Costs. In the event any action is instituted by a party to enforce this Agreement or any documents executed pursuant hereto, the prevailing party in such action shall be entitled to such reasonable attorneys' fees, arbitrator's fees, costs and expenses as may be fixed by the decision maker.

(c) Further Instruments. Each party will, whenever and as often as it shall be requested so to do by any other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Agreement.

(d) Entire Agreement and Incorporation of Exhibits. All exhibits and schedules attached and referred to in this Agreement are hereby incorporated herein as though fully set forth herein (and shall be deemed to be a part of this Agreement). This Agreement, together with the exhibits and schedules attached hereto, contain the entire agreement among the parties respecting the matters set forth herein, and supersede all prior agreements among the parties hereto respecting such matters.

(e) Business Days. Whenever an action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) which ends (or occurs) on a day other than a Business Day, then such period (or date) shall be extended until the immediately following Business Day. A "**Business Day**" is any day other than a Saturday, Sunday, a federal holiday, or a Texas holiday.

(f) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) Interpretation. The captions and headings of the sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions thereof. Each party acknowledges and agrees that this Agreement (1) has been reviewed by it and its counsel, (2) is the product of negotiations between the parties, and (3) shall not be deemed prepared or drafted by any one party. In the event of any dispute between the parties concerning this Agreement, the parties agree that any ambiguity in the language is not to be resolved against any party, but shall be given a reasonable interpretation in accordance with the plain meaning of the language and the intent of the parties as manifested hereby. All exhibits are hereby incorporated into the body of this Agreement.

(h) Third-Party Beneficiaries. The parties do not intend by any provision herein to confer any right, remedy or benefit upon any third party (express or implied), and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

(i) No Special Relationship. The parties' relationship is an ordinary commercial relationship, and the parties do not intend to create the relationship of principal and agent, partners, joint venturers, or any other special relationship.

(j) Brokers. With respect to the transaction contemplated by this Agreement, Optionor and Optionee each represents to the other that, no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity. Each party hereby agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the Option or sale of the Property by Optionor to Optionee, and such claim is made by, through or on account of any acts or alleged acts of said party or its representatives, then said party will protect, indemnify, defend and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith.

(k) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

15. **Time of Essence.** Optionor and Optionee hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof and that failure to timely perform any of the terms, conditions, obligations, or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

16. **Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Exclusive venue for any dispute arising hereunder shall reside in the state district courts located in Taylor County, Texas. The undersigned irrevocably consent to the personal jurisdiction of said courts and waive any and all objections to venue, including inconvenient forum.

17. **Waiver of Jury Trial.** Optionor and Optionee, each after consultation with an attorney of its own selection (which counsel was not directly or indirectly identified, suggested, or selected by the other party), both voluntarily waive a trial by jury of any issue arising in an action or proceeding between the parties or their successors, under or connected with this contract or its provisions.

18. **Further Assurances.** Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Optionor and Optionee have executed this Agreement as of the Effective Date.

OPTIONOR:

CROSS-ELL RANCH CORPORATION,
a Texas corporation

By:_________________
Name:
Title:

Optionor Acknowledgment

STATE OF TEXAS §
COUNTY OF _________ §

Before me on this day personally appeared ____________________________, the ____________________________ of CROSS-ELL RANCH CORPORATION, a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that such person executed the same for the purposes and consideration therein expressed, on behalf of said corporation.

Given under my hand and seal of office, this _____ day of _________, 2024.

____
Notary Public in and for the State of Texas

(Seal)

OPTIONEE:

BIG SPRING ECONOMIC DEVELOPMENT CORPORATION, a Texas nonprofit corporation

By:_________________
Name:
Title:

Optionee Acknowledgment

STATE OF TEXAS §
COUNTY OF HOWARD §

Before me _________________, on this day personally appeared ___________________, the ____________ of BIG SPRING ECONOMIC DEVELOPMENT CORPORATION, a Texas nonprofit corporation, known to me to be theperson whose name is subscribed to the foregoing instrument and acknowledged to me that such person executed the same for the purposes and consideration therein expressed, on behalf of said corporation.

Given under my hand and seal of office, this _____ day of ___________, 2024.

____
Notary Public in and for the State of Texas

(Seal)

My commission expires on [DATE].]

4892-6937-1630, v. 1

EXHIBIT A

OPTION PARCEL DESCRIPTION

That 40.0 acre tract of land, owned by Cross Ell Ranch Corporation, square in shape, located in Howard County, Texas, within the "Property," where the term "Property" is defined in the EDA, and at the northeast corner of Frazier Road and US Highway 87, in Howard County, Texas, abutting the north side of Frazier Road, abutting the east side of US Highway 87, in Howard County, Texas, including all rights appurtenant with respect to any strips and gores abutting the tract, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the tract, to the center line thereof, and as seen in the attached illustration "Frazier Project Option Parcel" as the "Option Parcel."

.

4892-6937-1630, v. 1

EXHIBIT B

MEMORANDUM OF OPTION AGREEMENT

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT ("**Memorandum**") dated as of the _______ day of ________________, ________ (the **"Effective Date"**), by and between Cross-Ell Ranch Corporation, a Texas corporation having an address at 975 Rio Hondo Rd, Tarpley, Texas 78883-4413 (**"Optionor"**), and Big Spring Economic Development Corporation, a Texas non-profit corporation having an address at 215 West Third Street, Big Spring, Texas 79720 (**"Optionee"** or **"EDC"**). Optionor and Optionee are also sometimes referred to herein collectively as the "**Parties**" or individually as a "**Party**."

Optionor and Optionee hereby acknowledge the following:

1. **Grant.** For valuable consideration described in that certain **OPTION AGREEMENT FOR OPTION PARCEL between CROSS-ELL RANCH CORPORATION and BIG SPRING ECONOMIC DEVELOPMENT CORPORATION**, dated _________ (the "**Option Agreement**"), Optionor has granted to Optionee the exclusive and irrevocable option to purchase all that certain real property being the approximately forty (40) acre tract of land located in within the Property and within Howard County, Texas, which is at the northeast corner of Frazier Road and US Highway 87, near the City of Big Spring, Howard County, Texas, and being described on Memo Exhibit (the "**Option Parcel**") under the terms and conditions set out in said Option Agreement.

2. **Term.** The term of the Option shall commence only upon the following condition precedent: in the event one or more third-party has not purchased or entered into a contract to purchase the entire "Property," as defined in the Cross-Ell Big Spring Development Agreement, on or before October 1, 2026, provided that if the condition of the Term occurs but the EDC does not exercise the option and purchase the Option Parcel, the Term will automatically expire at 5:00 p.m. (CST) on December 31, 2027 (the "**Term**").

3. **Business Days.** Whenever an action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) which ends (or occurs) on a day other than a Business Day, then such period (or date) shall be extended until the immediately following Business Day. A "Business Day" is any day other than a Saturday, Sunday, a federal holiday, or a Texas holiday.

4. **Notices.** Notices shall be given hereunder in writing by any method provided for in the Option Agreement, including by overnight delivery, or registered or certified mail. Notices from third parties shall be sent to the Parties at the addresses set forth in the Preamble hereto.

5. **Conflicts.** This Memorandum is intended only for recording purposes to provide notice of certain terms and conditions contained in the Option Agreement and is not to be construed as a complete summary of the terms and conditions thereof. This Memorandum is subject to the Option Agreement and any amendments, modifications, alterations, renewals, and extensions of the Option Agreement. The terms and provisions of the Option Agreement are incorporated in this Memorandum by reference. If there is any conflict between this Memorandum and the Option Agreement, the provisions of the Option Agreement shall supersede and control.

6. **<u>Counterparts</u>.** This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Optionor and Optionee have executed this Agreement as of the Effective Date.

OPTIONOR:

CROSS-ELL RANCH CORPORATION,
a Texas corporation

By:__________________
Name:
Title:

Optionor Acknowledgment

STATE OF TEXAS §
COUNTY OF _________ §

Before me on this day personally appeared ____________________________, the ____________________________ of CROSS-ELL RANCH CORPORATION, a Texas corporation, known to me to be theperson whose name is subscribed to the foregoing instrument and acknowledged to me that such person executed the same for the purposes and consideration therein expressed, on behalf of said corporation.

Given under my hand and seal of office, this ______ day of ____________, 2024.

____
Notary Public in and for the State of Texas

(Seal)

4892-6937-1630, v. 1

OPTIONEE:

BIG SPRING ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation

By:_________________
Name:
Title:

Optionee Acknowledgment

STATE OF TEXAS §
COUNTY OF HOWARD §

Before me _________________, on this day personally appeared ___________________, the ____________ of BIG SPRING ECONOMIC DEVELOPMENT CORPORATION, a Texas nonprofit corporation, known to me to be theperson whose name is subscribed to the foregoing instrument and acknowledged to me that such person executed the same for the purposes and consideration therein expressed, on behalf of said corporation.

Given under my hand and seal of office, this _____ day of ___________, 2024.

____
[OFFICER NAME AND TITLE]

(Seal)

My commission expires on [DATE].]

This instrument was prepared by,
the Big Spring Economic
Development Corporation
and the original should be returned
to:
Mark Willis
Big Spring EDC
215 West Third Street
Big Spring, Texas 79720

4892-6937-1630, v. 1

<u>**MEMO EXHIBIT**</u>

That 40.0 acre tract of land, owned by Cross Ell Ranch Corporation, square in shape, located in Howard County, Texas, within the "Property," where the term "Property" is defined in the EDA, and at the northeast corner of Frazier Road and US Highway 87, in Howard County, Texas, abutting the north side of Frazier Road, abutting the east side of US Highway 87, in Howard County, Texas, including all rights appurtenant with respect to any strips and gores abutting the tract, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the tract, to the center line thereof.

<u>EXHIBIT C</u>

PURCHASE AND SALE AGREEMENT

See attached Purchase and Sale Agreement for Option Parcel, incorporated herein for all purposes

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (the "Agreement") is made between **CROSS-ELL RANCH CORPORATION, a Texas corporation** ("Owner"), and whose address for purposes of notice under this Agreement is 975 Rio Hondo Road, Tarpley, Texas 78883 (Attn: Mack Frazier) and **BIG SPRING ECONOMIC DEVELOPMENT CORPORATION, a Texas nonprofit corporation**, hereafter called "BSEDC," whose address for purposes of notice under this Agreement is 215 West Third Street, Big Spring, Texas 79721 (Attn: Mark Willis).

RECITALS

WHEREAS, Owner owns the real property described on Exhibit A, attached hereto and incorporated herein, for all purposes (the "Property");

WHEREAS, BSEDC desires to assess the suitability of the forty-acre parcel (the "Option Parcel") out of the Property generally depicted on Exhibit B, and located at the northeast corner of Frazier Road and US Highway 87, for acquisition and development for certain business purposes;

WHEREAS, BSEDC desires to access the Option Parcel to examine, inspect, and perform tests on the Option Parcel to evaluate the physical and environmental condition of the Option Parcel; to perform other tests and inspections; to conduct surveys and other measurements; and to facilitate BSEDC's marketing of the Property to third-parties;

WHEREAS, Owner will agree to grant BSEDC access to the Property and the Option Parcel for the above stated purposes, subject to the terms of this Agreement; and

WHEREAS, the access granted pursuant to this Agreement specifically excludes all well sites located on the Property;

NOW, THEREFORE, Owner and BSEDC for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, agree as follows:

1. Commencing on October 1, 2024, BSEDC and its agents, contractors, and representatives (the "Inspecting Parties") shall have a right of access to the Option Parcel for the purpose of examining, inspecting, and performing tests on the Option Parcel to evaluate the physical and environmental condition of the Option Parcel and to perform other tests and inspections on the Option Parcel; to conduct surveys and other measurements of the Option Parcel and the Property, including, without limitation, an ALTA/NSPS Land Title Survey and a phase 1 environmental site assessment; and to access the Property for the purpose of marketing the Property for sale to third parties (with the exception that BSEDC will not have the right to access the well sites located on the Property). As to the Option Parcel, BSEDC's right of access shall continue until the occurrence of the earliest of any one of the following:

a. BSEDC provides Owner with written notice that this Agreement is terminated;

b. BSEDC provides Owner with written notice of BSEDC's election to exercise the option granted to BSEDC pursuant to the terms of an Option Agreement contemplated to be executed by and between Owner and BSEDC, providing BSEDC with an option to purchase the forty-acre parcel out of the Property generally depicted on Exhibit B and located at the northeast corner of Frazier Road and US Highway 87; and

c. The expiration or termination of the Option Agreement, as provided therein.

As to the Property, BSEDC's right of access shall continue until the occurrence of the earliest of any one of the following:

a. BSEDC provides Owner with written notice that this Agreement is terminated;

b. The execution of a Purchase and Sale Agreement concerning Owner's sale of all or any part of the Property;

c. December 31, 2027;

d. The expiration or termination of the Option Agreement, as provided therein.

It is contemplated that Owner and BSEDC will enter into a development agreement ("EDA") by which Owner and BSEDC agree to perform certain obligations to attract development to the Property. Notwithstanding any other provision in this Agreement, if such an EDA is not fully executed by Owner and BSEDC within sixty (60) days after the date of this Agreement, or if BSEDC or the City of Big Spring default on their respective obligations under the EDA, this Agreement shall terminate. In the event BSEDC defaults on its obligations under this Agreement, Owner may, at its option, elect to terminate this Agreement with immediate effect upon delivery of written notice to BSEDC.

2. Upon the expiration of this Agreement or in the event an occurrence results in the cessation of the right of access provided by this Agreement, BSEDC shall provide Owner with complete copies of all studies and reports generated by BSEDC and remove all of the business personal property of the Inspecting Parties located on the Property or Option Parcel within ten (10) business days of the expiration or termination of this Agreement. For the purposes of this Agreement, "business personal property" shall include any and all furniture, fixtures, equipment, and any other tangible personal property of the Inspecting Parties located at the Property or Option Parcel. The foregoing obligations will survive the termination of this Agreement.

3. BSEDC shall be responsible for the payment of electric, water, sanitary and garbage collections services, internet, cable, telephone, communication and other utility services, if any, associated with their access to and activities on the Property and Option Parcel.

4. BSEDC must provide Owner with at least 24-hours advance written notice of BSEDC accessing the Option Parcel and Property, together with a schedule of studies to be performed during such access.

5. BSEDC will conspicuously mark any measuring stations installed on the Property or Option Parcel, in such a manner that a person operating a vehicle, tractor, or other equipment is made aware of the presence of the measuring station(s).

6. BSEDC's activities on the Property and Option Parcel must not unreasonably interfere with the use and enjoyment of the Property by Owner and Owner's officers, directors, employees, tenants, contractors, licensees, and representatives.

7. BSEDC will not create or allow the creation of a nuisance, or allow any waste, injury, or destruction to the Property or Option Parcel. BSEDC shall keep the Property and Option Parcel clean and promptly remove all litter, trash, debris, and other materials from the Property and shall not allow such material to accumulate on the Property.

8. BSEDC will restore the Property and Option Parcel to its condition as of the date hereof, reasonable wear and tear excepted. This obligation will survive the termination of this Agreement.

9. In the event an occurrence results in the cessation of BSEDC's right of access, BSEDC shall remove any of its or its agents' or contractors' business personal property located on the Property or Option Parcel within ten (10) business days of BSEDC's actual receipt of written notice from Owner that such an event has occurred. For the purposes of this Agreement, "business personal property" shall include any and all furniture, fixtures and equipment of BSEDC or its agents or contractors located at the Property or Option Parcel.

10. BSEDC acknowledges and accepts the condition of the Property and Option Parcel for the purposes of its access on an "AS-IS," "WHERE-IS" basis, with all faults, latent or patent. To the best of Owner's actual and current knowledge, with no duty of inquiry or investigation, there exists no dangerous or hazardous condition at the Property or Option Parcel that would not be obvious.

11. BSEDC agrees to maintain at all times during the term of this Agreement, at BSEDC's cost, a commercial general liability insurance policy protecting Owner against all claims or demands that may arise or be claimed on account of any negligence on the part of BSEDC in connection with BSEDC's access to the Property and Option Parcel, in an amount of $1,000,000.00 per occurrence, $2,000,000.00 aggregate, and said policy shall include (A) coverage for bodily injury and death, property damage and products liability coverage; (B) contractual

liability coverage insuring the obligations of BSEDC under this Agreement; and deleting the contractual claim exclusion for personal injury and advertising injury. Prior to exercising the right of access granted by this Agreement BSEDC shall deliver to Owner, upon actual receipt of Owner's written request, a certificate demonstrating that insurance is paid up and in force.

12. BSEDC agrees to indemnify and hold harmless Owner from all costs, losses, damages, liabilities, expenses, penalties, and fines whatsoever that may arise from or be claimed by third parties against Owner by any person or persons for injury to person or property to the extent caused by BSEDC and its shareholders, directors, employees, officers, agents, contractors, clients, invitees, and representatives (collectively, the "BSEDC Parties") negligent acts or omissions in accessing to or use of the Property and Option Parcel by the BSEDC Parties except to the extent that such claims are attributable to the negligence or misconduct of Owner.

13. Owner, BSEDC, and all parties claiming by or through them, mutually release and discharge each other from all claims and liability arising from or caused by any casualty or hazard covered or required herein to be covered, in whole or in part, by insurance on the Property or Option Parcel or in connection with property on or activities conducted in the Property or Option Parcel, and waive any right of subrogation which might otherwise exist in or accrue to any person on account hereof, subject to approval by Owner's and BSEDC's respective insurance carriers.

14. Notices to the parties shall be mailed or delivered to the addresses set forth on the first page of this Agreement, unless a party advises the other party differently in writing. All notices to either party shall be sent by certified or registered mail, return receipt requested.

15. **Reserved.**

16. This Agreement will be governed by the laws of the State of Texas, as to both interpretations and performance. Venue for any dispute between Owner and BSEDC shall exclusively reside in the state district courts located in Taylor County, Texas. The undersigned hereby consent to the personal jurisdiction of said courts and waive any and all objections to venue, including inconvenient forum.

17. BSEDC shall not assign this Agreement to any third party without the prior written consent of Owner, and the terms hereof are not intended to and shall not be construed to constitute a partnership or joint venture between the parties. In the event of any assignment to which Owner consents, BSEDC shall remain jointly and severally liable with such assignee under the terms of this Agreement.

18. This Agreement sets forth all the promises, agreements, conditions, and understandings between Owner and BSEDC relative to BSEDC's right of access to the Property and Option Parcel. There are no other promises, agreements, conditions, or understandings, either oral or written, between them. No subsequent alteration, amendment, change, or addition to this Agreement will be binding on Owner or BSEDC unless in writing and signed by them and made a part of this Agreement by direct reference. This Agreement may be amended only by an

instrument in writing signed by the parties.

19. If this Agreement is executed in multiple counterparts, all counterparts taken together will constitute this Agreement.

20. No waiver of default by any party to this Agreement may be implied from failure to act by any other party to the Agreement, regardless of whether the default continues or is repeated. No express waiver of a default will affect any other default or cover any other period not specified in the express waiver. A waiver of any default in the performance of any provision contained in this Agreement will not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other provision contained in this Agreement.

21. If a provision in this Agreement is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Agreement, and this Agreement is to be construed as if the unenforceable provision is not a part of the Agreement.

22. This Agreement, this transaction, and all information learned in the course of this transaction will be kept confidential, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist BSEDC to investigate the Property and Option Parcel or either party to close this transaction or if disclosure to a third party is expressly agreed by the parties. Remedies for violations of this provision are limited to injunctions, and no damages or rescission may be sought or recovered as a result of any such violations.

23. THE UNDERSIGNED EACH IRREVOCABLY AND EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, COUNTERCLAIM OR PROCEEDING (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR RELATING THERETO OR ARISING FROM THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

EXECUTED to be effective on ______________________, 2024.

CROSS ELL RANCH CORPORATION,
a Texas corporation

By: ______________________________

Printed Name: ________________________

Title: ______________________________

BIG SPRING ECONOMIC DEVELOPMENT CORPORATION,
a Texas nonprofit corporation

By: ______________________________

Printed Name: ________________________

Title: ______________________________

4887-6159-8702, v. 1

Exhibit A
Property

The Property is 443.607 acres, more or less, in Section 4, Block 33, Howard County, Texas, conveyed to Cross-Ell Ranch Corporation by Special Warranty Deed dated October 30, 1986, and recorded in volume 610, pages 591-592 of the real property records of Howard County, Texas, as follows:

> The West 532 acres of Section 4, Block 33, TWP 1 South, T&P Railroad Company Survey, Howard County, Texas;

Save for and Except each of the following:

> Those three tracts together containing 17 acres, more or less, and described in a Warranty Deed recorded in volume 610, pages 593-595 in the real property records of Howard County, Texas;
>
> Those three tracts, of 2.02 acres, the second of 10.0 acres, and the third of 0.21 acres, more or less, and described in a Warranty Deed dated November 15, 1988, recorded in volume 624, page 42 of the real property records of Howard County, Texas;
>
> That tract of 9.214 acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1356, pages 680-686 of the real property records of Howard County, Texas; and
>
> That tract of 40.089 Acres, more or less, described in a Deed dated August 20, 2013, recorded in volume 1360, pages 164-173 of the real property records of Howard County, Texas; and
>
> Those two tracts, one of 5.37 acres and the other of 3.51 acres, more or less, described in a Warranty Deed dated July 26, 2017, recorded in volume 1644, pages 582-585 of the real property records of Howard County, Texas.

Exhibit B

Option Parcel

That 40.0 acre tract of land, with four sides of 0.25 mile in length each, located within the Property, and at the northeast corner of Frazier Road and US Highway 87, in Howard County, Texas.

PURCHASE AND SALE AGREEMENT FOR OPTION PARCEL

This OPTION PARCEL PURCHASE AND SALE AGREEMENT (this "**Agreement**"), dated as of the ____ day of ______________, ______ (the "**Effective Date**"), is entered into between Cross-Ell Ranch Corporation, a Texas corporation ("**Seller**"), having an address at 975 Rio Hondo Rd, Tarpley, Texas 78883-4413, and Big Spring Economic Development Corporation, a Texas non-profit corporation, ("**Purchaser**"), having an address at 215 West Third Street, Big Spring, Texas 79720.

RECITALS

WHEREAS, Seller is the owner of the Option Parcel, hereinafter defined;

WHEREAS, Seller and Purchaser are parties to that certain Option Agreement for Option Parcel dated _______________, 2024 (the "Option Agreement"), by which Purchaser was granted an option to purchase the Option Parcel after October 1, 2026, and on or before December 31, 2027 (the "Option Term") and

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Purchaser the Option Parcel and Purchaser desires to purchase the Option Parcel from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

"380 Agreement" means the 380 Economic Development and Performance Agreement executed by and between the City of Big Spring, Texas, and Seller, dated __________, 2024.

"**Agreement**" has the meaning set forth in the preamble.

"**Bring Down Certificate**" has the meaning set forth in Section 5.02(e).

"**Business Day**" has the meaning set forth in Section 15.04.

"City" means the City of Big Spring, Texas.

"**Closing**" has the meaning set forth in Section 5.01.

"**Closing Date**" has the meaning set forth in Section 5.01.

"**Code**" has the meaning set forth in Section 5.02(b).

"**Cure Period**" has the meaning set forth in Section 6.03(b)

"**Deed**" has the meaning set forth in Section 5.02(a).

"**Deposit**" has the meaning set forth in Section 3.01(a).

"**Due Diligence Period**" has the meaning set forth in Section 4.02.

"**Due Diligence Materials**" has the meaning set forth in Section 4.01.

"EDA" means the Economic Development Agreement executed by and between Seller, Purchaser, and the City of Big Spring, dated to be effective _________________, 2024.

"**Effective Date**" has the meaning set forth in the preamble.

"**Excluded Personal Property**" has the meaning set forth in Section 2.02.

"**Improvements**" has the meaning set forth in Section 2.01(b).

"**Inspections**" has the meaning set forth in Section 4.02.

"**Land**" has the meaning set forth in Section 2.01(a).

"**Notices**" has the meaning set forth in Section 10.01.

"**OFAC**" has the meaning set forth in **Error! Reference source not found.**.

"**Option Parcel**" has the meaning set forth in Section 2.01.

"**Permitted Exceptions**" has the meaning set forth in Section 6.02.

"**Pre-Existing Condition**" has the meaning set forth in Section 4.04.

"**Purchase Price**" has the meaning set forth in Section 3.01.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Default**" has the meaning set forth in Section 11.01(b)

"**Purchaser's Representatives**" has the meaning set forth in Section 4.03.

"**Purchaser's Survey**" has the meaning set forth in Section 6.03(a).

"**Seller**" has the meaning set forth in the preamble.

"**Seller's Default**" has the meaning set forth in Section 11.01(a).

"**Seller's Knowledge**" means the actual and current knowledge of the President of Seller on the Effective Date, with no duty of inquiry or investigation.

"**Service Contracts**" has the meaning set forth in Section 7.01(g).

"**Title Commitment**" has the meaning set forth in Section 6.03(a).

"**Title Company**" shall mean Republic Title of Texas, Inc., located at 2626 Howell Street, 10th Floor, Dallas, Texas 75204, (214) 855-8888, Attn: Clay Arnold, carnold@republictitle.com.

"**Title Insurance Policy**" has the meaning set form in Section 6.01(b).

"**Title Objection**" has the meaning set forth in Section 6.03(b).

"**Title Objection Deadline**" has the meaning set forth in Section 6.03(b).

"**Title Objection Notice**" has the meaning set forth in Section 6.03(b).

ARTICLE II
CONVEYANCE OF THE OPTION PARCEL

Section 2.01 Subject of Conveyance. Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, all right, title, and interest of Seller in and to the following (collectively referred to herein as the "**Option Parcel**"):

(a) All that certain lot, piece, or parcel of land located at the northeast corner of US Highway 87 and Frazier Road in the County of Howard, and State of Texas, as more particularly bounded and described in Exhibit B attached hereto and hereby made a part hereof (the "**Land**");

(b) All buildings and improvements located on the Land and all Seller's right, title, and interest in and to any and all fixtures attached thereto (collectively, the "**Improvements**");

(c) All rights appurtenant with respect to any strips and gores abutting the Land, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the Land, to the center line thereof; and

(d) Except as specified herein, all other rights, privileges, easements, licenses, appurtenances, and hereditaments relating to the Option Parcel;

Notwithstanding anything herein to the contrary, "**Option Parcel**" does not include any tenant fixtures or other property belonging to the tenants at the Option Parcel, or any item leased from third parties.

Seller shall retain and not convey to Purchaser all minerals and groundwater owned by Seller. The term "minerals" shall mean all oil, gas, and other minerals in or under and that may be produced from the Option Parcel, any royalty under any existing or future mineral lease covering any part of the Option Parcel, executive rights (including the right to sign a mineral lease covering any part of the Option Parcel), implied rights of ingress and egress, exploration and development rights, production and drilling rights, mineral lease payments, and all related benefits. If the Option Parcel is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it. The minerals do NOT include sand, gravel, limestone, building stone, caliche, surface shale, near-surface lignite, and iron. Seller will waive all surface rights relating to the minerals, including the right to access, explore, drill, mine, or otherwise utilize or disturb any part of the Option Parcel in any way. Notwithstanding the foregoing, nothing herein contained shall ever be construed to prevent Seller from developing or producing oil, gas and other minerals that may be produced from the Option Parcel by pooling or by directional or horizontal drilling under the Option Parcel from well sites located or mines that open on lands other than the Option Parcel.

Section 2.02 Excluded Personal Property. Notwithstanding the foregoing, the sale of the Option Parcel contemplated by this Agreement shall not include the personal property listed in Exhibit P attached hereto and made a part hereof (the "**Excluded Personal Property**"), which Excluded Personal Property is expressly excluded from such conveyance.

Section 2.03 As Is, Where Is. PURCHASER AGREES THAT THIS CONTRACT HAS BEEN NEGOTIATED WITH THE UNDERSTANDING THAT, EXCEPT AS SPECIFIED HEREIN, THE OPTION PARCEL IS BEING SOLD "AS IS" AND "WHERE IS" AND WITH ALL FAULTS. PURCHASER ACKNOWLEDGES THAT PURCHAESR HAS NO RECOURSE AGAINST SELLER IN THE EVENT OF DISCOVERY OF ANY DEFECTS OF ANY KIND, LATENT OR PATENT. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESSED OR IMPLIED, OR ANY WARRANTIES ARISING BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, SUITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC OR PARTICULAR PURPOSE, OR OF GOOD AND WORKMANLIKE CONSTRUCTION. PURCHASER ASSUMES AND AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS REGARDING ANY AND ALL RISKS WITH RESPECT TO THE PHYSICAL AND ENVIRONMENTAL CONDITION OF THE OPTION PARCEL, INCLUDING WITHOUT LIMITATION ANY LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT ("CERCLA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE, AND THE INCOME AND EXPENSES ATTRIBUTABLE TO SUCH RISKS. THE DEED WILL CONTAIN A PROVISION STATING THE TERMS OF THIS PARAGRAPH, ALL OF WHICH SHALL SURVIVE CLOSING.

ARTICLE III
PURCHASE PRICE

Section 3.01 Purchase Price and Deposit. The purchase price to be paid by Purchaser to Seller for the Option Parcel is $_________________ (the "**Purchase Price**"). The Purchase Price shall be payable as follows:

(a) Within ten (10) business days of the Effective Date, Purchaser will deposit earnest money in good funds in the amount of $100,000.00 (the "**Deposit**"), along with this fully executed Agreement with the Title Company, as escrow agent, which sum will be applied according to the terms of this Agreement. The Title Company will acknowledge receipt of the Earnest Money by signing Title Company's "Receipt for Earnest Money Deposit" at the end of this Agreement and send a copy thereof to Seller and Buyer;

(b) If the sale of the Option Parcel is consummated as contemplated by this Agreement, then the Deposit will be applied to the Purchase Price at Closing. If this contract is terminated prior to the consummation of the sale of the Option Parcel in accordance with this Agreement, then the Deposit will be applied in accordance with Section 4.02 and Article XI herein.

(c) the Cash Price (as defined in the Option Agreement) paid by Purchaser to Seller in cash at Closing, and the balance as a donation granted by Seller to Purchaser.

ARTICLE IV
DUE DILIGENCE INVESTIGATION

Section 4.01 Due Diligence Materials. On or before the date that is thirty (30) days after the Effective Date (the "**Due Diligence Delivery Date**"), Seller shall, if not already made available to Purchaser, deliver, cause to be delivered, or make available, copies of the following which exist as of the date of this Agreement and are in Seller's actual possession: any environmental/hazardous material reports, soils reports, governmental permits/approvals, tax information, utility letters, the Leases and all amendments, other similar materials relating to the physical and environmental condition of the Option Parcel, and any other documents relating to the Option Parcel reasonably requested by Purchaser (collectively, the "**Due Diligence Materials**"). The Due Diligence Delivery Date shall be extended by one day for each day the Seller delays in making the Due Diligence Materials available to Purchaser. Seller agrees to provide the Due Diligence Materials as an accommodation to Purchaser. Seller makes no representation or warranty whatsoever as to the completeness or accuracy of the Due Diligence Materials, and furthermore, Seller does not assign to Purchaser any warranty, guarantee, or any other right or remedy by contract, at law, or in equity, which Seller may have with respect to any third party involved in the creation or preparation of the Due Diligence Materials. Purchaser will rely exclusively upon the results of Inspections (defined below) obtained by Purchaser in Purchaser's sole discretion.

Section 4.02 Due Diligence Period. Purchaser shall have a period, commencing on the Effective Date through the date which is sixty (60) days after the Due Diligence Delivery Date (the "**Due Diligence Period**"), to conduct or cause to be conducted any and all tests, studies, surveys, inspections, reviews, assessments, or evaluations of the Option Parcel, including without limitation engineering, topographic, soils, zoning, wetlands, and environmental inspections (including Phase I and/or Phase II environmental site assessments to be performed by an environmental consultant selected by Purchaser) (the "**Inspections**"), as Purchaser deems necessary, desirable, or appropriate in its sole and absolute discretion, and analysis of the Due Diligence Materials. Purchaser shall provide Seller with copies of all Inspections promptly upon Purchaser's receipt of the same. Purchaser shall have the unconditional right, for any reason or no reason whatsoever, to terminate this Agreement upon written notice to Seller delivered at any time prior to 5:00 p.m. Central Time on the last day of the Due Diligence Period and receive a refund of the Deposit. If Purchaser does not timely notify Seller of its election to terminate this Agreement prior to 5:00 p.m. Central Time on the last day of the Due Diligence Period, Purchaser shall be deemed to have elected to proceed to Closing, subject to the terms and conditions of this

Agreement/terminate this Agreement, and the Deposit will become nonrefundable, but applicable to the Purchase Price at Closing. If Purchaser elects to terminate this Agreement as provided in this Section 4.02, this Agreement shall terminate, the Deposit will be refunded to Purchaser, and the parties shall have no further liability hereunder (except with respect to those obligations hereunder which expressly survive the termination of this Agreement). If the conveyance contemplated by this Contract fails to close for any reason, Purchaser shall restore the Option Parcel to near its original condition as reasonably possible; this obligation shall survive closing. Notwithstanding anything to the contrary contained in this Agreement, amendments to this Agreement to extend the Due Diligence Period may be agreed upon in writing or by email by each party or each party's respective attorney and notices to terminate this Agreement prior to the expiration of the Due Diligence Period may be given, by Purchaser as provided in this Agreement or by Purchaser or Purchaser's attorney by fax or by email to Seller and/or Seller's attorney.

Section 4.03 Purchaser's Access. Commencing on the Effective Date and continuing until the earlier to occur of the termination of this Agreement or the Closing, Purchaser and engineers, architects, employees, agents and representatives (collectively, "**Purchaser's Representatives**") shall have the right to enter upon the Option Parcel for the purpose of making inspections and studies, and conducting such tests as it deems advisable, including but not limited to geotechnical studies, seismic studies, soil tests, environmental and ecological studies, wetlands assessment and feasibility studies to develop plans and budgets for development of the Option Parcel (collectively, the "Inspections"). Prior to entering upon the Option Parcel to conduct any inspection or investigation pursuant to this Agreement, Purchaser shall obtain commercial general liability insurance policy in an amount of at least $1,000,000.00 per occurrence, $2,000,000.00 aggregate, and said policy shall include (A) coverage for bodily injury and death, property damage and products liability coverage; (B) contractual liability coverage insuring the obligations of Purchaser under this Agreement; and (C) fire and legal liability coverage with respect to the Option Parcel in an amount of at least $250,000.00. Purchaser will cause the insurance policies to name Seller as an additional insured. The insurance shall be written by a company or companies acceptable to Seller, authorized to engage in the business of general liability insurance in the State of Texas. Prior to exercising the right of access provided under this Section, Purchaser shall deliver to Seller a certificate of insurance.

Section 4.04 Indemnity. Purchaser shall protect, defend, indemnify and hold harmless Seller from any and all claims, liabilities, damages and expenses, including reasonable attorneys' fees, from any actual damage to persons or property or any violation of law arising from or directly related to Purchaser's and Purchaser's Representatives' entry upon the Option Parcel to conduct any tests pursuant to <u>Section 4.03</u> prior to Closing; provided, however, that Purchaser's indemnity hereunder shall not include any claims resulting from (A) the gross negligence or willful misconduct of Seller or any party acting on behalf of Seller or (B) the discovery of any condition of the Option Parcel that existed prior to Purchaser's entry thereon (a "**Pre-Existing Condition**"), except to the extent, and only to the extent, such Pre-Existing Condition is directly and materially worsened by Purchaser's actions on the Option Parcel, or alternatively, to the extent such Pre-Existing Conditions were caused or materially worsened by a contractor, agent, or invitee of Seller engaged by Seller to conduct studies, surveys, inspections, or tests for Purchaser's benefit and on Purchaser's request. In the event Purchaser does not purchase the Option Parcel, Purchaser shall restore the Option Parcel to substantially the condition in which it existed prior to such entry or testing. This covenant shall survive termination of this Agreement.

ARTICLE V
CLOSING

Section 5.01 Closing Date. The closing of the transaction contemplated by this Agreement (the "**Closing**") shall occur within fifteen (15) days after the expiration of the Due Diligence Period (the "**Closing Date**") through an escrow closing with the Title Company in accordance with the terms and conditions of this Agreement. The Seller shall deliver Seller's Closing Deliverables (as defined in Section 5.02 below) and Purchaser shall deliver Purchaser's Closing Deliverables (as defined in Section 5.03 below) to the Title Company on the Business Day prior to the Closing Date pursuant to Seller's and Purchaser's respective closing instructions to the Title Company, which must be consistent with the terms of this Agreement. Seller agrees to deliver possession of the Option Parcel to Purchaser on the Closing Date subject to the rights of existing tenants.

Section 5.02 Seller's Closing Deliverables. At Closing, Seller shall deliver or cause to be delivered to the Title Company, the following executed, certified, and acknowledged by Seller, as appropriate:

(a) One (1) original special warranty deed (the "**Deed**") in a form approved by Purchaser, duly executed with the appropriate acknowledgment form and otherwise in proper form for recording so as to convey title to the Option Parcel to Purchaser as required by this Agreement.

(b) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code, as amended and the regulations thereunder (collectively, the "**Code**"), which certification shall be signed under penalty of perjury.

(c) An original seller’s affidavit in a form reasonably acceptable to the Title Company.

(d) A resolution of the board of directors or shareholders of Seller authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(e) A written certificate stating that all representations and warranties contained in Section 7.01 remain, as of the Closing Date, true, correct, and complete in all material respects as when first made hereunder (the "**Bring Down Certificate**").

(f) A Seller's closing statement prepared by the Title Company reflecting the appropriate credits, prorations, adjustments, and disbursements for the consummation of the transaction contemplated by this Agreement, including the payment of the balance of the Purchase Price due Seller.

(g) Originals or, if originals are not in the possession or control of the Seller, copies of Plans and Surveys, to the extent same are in Seller's possession or under Seller's control.

(h) All other documents reasonably necessary or otherwise required by Title Company to consummate the transaction contemplated by this Agreement.

Section 5.03 Purchaser's Closing Deliverables. On the Closing Date, Purchaser shall deliver or cause to be delivered to the Title Company, the following, executed, certified, and acknowledged by Purchaser, as appropriate:

(a) The balance of the Purchase Price to be paid in Cash as set forth in Section 3.01(b).

(b) A Purchaser's closing statement prepared by the Title Company reflecting the appropriate credits, prorations, adjustments, and disbursements for the consummation of the transaction contemplated by this Agreement.

(c) Purchaser shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under Section 5.03 of this Agreement.

(d) A resolution of the board of directors of Purchaser and a resolution of the City Council of Big Spring authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(e) All other documents reasonably necessary or otherwise required by the Title Company to consummate the transactions contemplated by this Agreement.

Section 5.04 Closing Costs.

(a) Seller and Purchaser shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs; provided, however, that if any legal action is instituted under this Agreement, the prevailing party in such action shall be entitled to recover from the other party costs related to such legal action, including reasonable attorneys' fees and costs in all trial, appellate, post-judgment, and bankruptcy proceedings.

(b) Seller shall pay:

(i) The cost of the Owner's Title Insurance, which includes the cost of the commitment; however, Seller shall not be required to pay for any of the other endorsements to the Title Insurance Policy;

(ii) All recording fees for the release of any liens on the Option Parcel, as required pursuant to the terms of this Agreement; and

(iii) Any and all costs incurred by Seller in connection with the preparation, review, and negotiation of this Agreement and the transactions and the

Closing contemplated by this Agreement, including any attorneys' or consultancy fees.

(c) Purchaser shall pay:

(i) The costs charged by Purchaser's Title Company, including, without limitation, costs related to Purchaser's lender's title insurance policy and Purchaser's title policy endorsements;

(ii) The costs related to Purchaser's Survey and any other survey or survey update;

(iii) Any other fees or costs related to Purchaser's due diligence reviews; and

(iv) All costs related to the recording fees payable in connection with the recording of the deed and Purchaser's lender's security instruments, if any.

ARTICLE VI
TITLE MATTERS AND REVIEW

Section 6.01 Acceptable Title. Seller shall convey, and Purchaser shall accept, such title to the Option Parcel that the Title Company would be willing to insure, in accordance with the terms and conditions of this Agreement, and subject only to:

(a) The Permitted Exceptions; and

(b) Such other matters as the Title Company shall be willing to omit as exceptions to coverage, without additional endorsement premiums paid by Seller (which such endorsement premiums may be paid by Purchaser), or to except with insurance against collection out of or enforcement against the Option Parcel. As a condition to Purchaser's obligation to close, the Title Company shall issue to Purchaser, and Purchaser shall accept, without payment of an extraordinary premium, a Form T-1 owner's policy of title insurance with extended coverage in an amount not less than the Purchase Price, insuring that the entire fee simple title to the Option Parcel is vested in Purchaser, subject only to the Permitted Exceptions (the "**Title Insurance Policy**"), and underwritten by First American Title Insurance Company.

Section 6.02 Permitted Exceptions. The term "**Permitted Exceptions**" as used herein shall mean and refer to:

(a) Any and all zoning, building, environmental, and other laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates of all governmental authorities having jurisdiction with respect to the Option Parcel, including, without limitation, landmark designations and all zoning variances and special exceptions, if any, in effect as of the Closing Date, and any and all future zoning, building, environmental, and other laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates of all governmental authorities having jurisdiction with respect to the Option Parcel, including, without limitation, landmark designations and all zoning variances and special exceptions.

(b) Possible encroachments and/or projections of stoop areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, satellite dishes, protective netting; sidewalk sheds, ledges, fences, coping walls (including retaining walls and yard walls), air-conditioners, and the like, if any, on, under, or above any street or highway, the Option Parcel, or any adjoining property.

(c) Any state of facts that an accurate survey of the Option Parcel would disclose or has disclosed.

(d) All presently existing and future liens for unpaid real estate taxes, assessments, and water and sewer charges that are not due and payable as of the Closing Date, subject to any apportionments as provided for in this Agreement.

(e) All covenants, restrictions and rights, and all easements and agreements for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer, or other utility pipelines, poles, wires, conduits, or other like facilities, and appurtenances thereto, over, across, and under the Option Parcel; provided, however, that the same are not violated by the Improvements and do not impose any monetary obligation on the owner of the Option Parcel.

(f) Variations between tax lot lines and lines of record title.

(g) Any lien or encumbrance (including, without limitation, any mechanic's lien and materialmen's lien) the removal of which is the obligation of a tenant.

(h) Any lien or encumbrance arising out of the acts or omissions of Purchaser.

(i) Consents by Seller or any former owner for the erection and maintenance of any structures on, under, or above any streets or roads on which the Option Parcel may abut, provided same do not negatively affect the insurability of title.

(j) Any financing statements filed on a date more than five (5) years prior to the Closing Date and not renewed, and any financing statements, chattel mortgages, encumbrances, or mechanics' or other liens filed against the property or equipment which is not part of the Option Parcel or is owned by tenants.

(k) Any exceptions disclosed on Schedule B of the Title Commitment which are the responsibility of any tenant under the Leases to cure, correct, and remove of record.

(l) The standard conditions and exceptions to title contained in the form of title policy or updated Title Commitment issued to Purchaser by the Title Company.

(m) Any other matter that is deemed a Permitted Exception under this Agreement.

Section 6.03 Title.

(a) Purchaser shall promptly order, at its sole cost and expense: (i) a title commitment from the Title Company for the issuance of a Title Insurance Policy, together with true, legible (to the extent available), and complete copies of any tax search, departmental or municipal searches, and all instruments giving rise to any defects or exceptions to title to the Option Parcel (collectively, the "**Title Commitment**"), which Title Commitment shall be delivered to counsel for both Purchaser and Seller concurrently; and (ii) a new survey of the Option Parcel, prepared by a surveyor licensed in the State of Texas ("**Purchaser's Survey**"). Purchaser's Survey shall be addressed to Purchaser, Seller, the Title Company, and any Lender selected by Purchaser, and shall be delivered to counsel for both Purchaser and Seller concurrently.

(b) Purchaser or Purchaser's attorney shall deliver to Seller, and Seller's attorney, in writing a notice (the "**Title Objection Notice**"), which specifies any objections to the exceptions to title set forth in the Title Commitment or Purchaser's Survey, other than the Permitted Exceptions (each a "Title Objection," and collectively, hereinafter the "**Title Objections**"), within fifteen (15) business days after Purchaser's receipt of the Title Commitment and Survey (or any subsequent update thereof) (the "**Title Objection Deadline**"). Purchaser will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Purchaser has made no Title Objection by the Title Objection Deadline. The matters that Purchaser either approves or is deemed to have approved are "Permitted Exceptions." If Purchaser notifies Seller of any Title Objections, Seller shall have thirty (30) days to cure the Title Objections (the "**Cure Period**"). Seller shall not be required to incur any expense or institute suit to cure the Title Objections. If Seller does not cure all the Title Objections before the end of the Cure Period, Purchaser may notify Seller within fifteen (15) business days after the end of the Cure Period that either (i) this Contract is terminated or (ii) Purchaser waives the Title Objections, which will then be deemed Permitted Exceptions, and Purchaser will proceed to close. If Purchaser does not timely notify Seller of Purchaser's election to terminate this contract or to waive the Title Objections, Purchaser will be deemed to have waived the Title Objections, which will then be deemed Permitted Exceptions, and Purchaser will proceed to close.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Section 7.01 Seller's Representations and Warranties. To the best of Seller's Knowledge, Seller represents and warrants to Purchaser on and as of the date of this Agreement and on and as of the Closing Date, as follows:

(a) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas, is qualified to conduct business in the State of Texas and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(b) The execution, delivery, and performance of this Agreement by Seller and all agreements, instruments, and documents herein provided to be executed by Seller on the Closing Date: (i) do not violate the articles of incorporation of Seller, or any contract, agreement, commitment, lease, order, judgment, or decree to which Seller is a party; and (ii) have been duly authorized by the resolution of the directors of Seller and the appropriate and necessary action has been taken by such directors on the part of Seller. The individual executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof. This Agreement is valid and binding upon Seller, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

(c) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, writ, injunction, or decree which is binding upon Seller which has not been previously obtained.

(d) Seller is not a "foreign person" within the meaning of Section 1445 of the Code.

(e) A list of all Leases affecting the Option Parcel on the date of this Agreement is attached to this Agreement as Exhibit L, true, correct, and complete copies of which have been delivered to Purchaser.

(f) To the best of Seller's Knowledge, there is no litigation, arbitration, or other legal or administrative suit, action, proceeding, or investigation pending or threatened against or involving Seller or the ownership or operation of the Option Parcel, including, but not limited to, any condemnation action relating to the Option Parcel.

(g) Seller has not entered into any service, maintenance, supply, leasing, brokerage, listing, and/or other contracts relating to the Option Parcel (along with all amendments and modifications thereof, the "**Service Contracts**") which shall be binding upon Purchaser after the Closing, other than the Leases Each of the Service Contracts can and, at Purchaser's option, shall be terminated by Seller on or before the Closing Date. Seller has performed all its obligations under each of the Service Contracts and no fact or circumstance has occurred which, by itself or with the passage of time or the giving of notice or both, would constitute a default by any party under any of the Service Contracts. Seller has delivered to Purchaser true, correct, and complete copies of all Service Contracts.

(h) Except as otherwise disclosed in writing by Seller to Purchaser, Seller has not received notice and, to the best of Seller's Knowledge, is not aware of any material violation of any law or municipal ordinance, order, or requirement noted or issued against the Option Parcel by any governmental authority having jurisdiction over the Option Parcel, that has not been cured, corrected, or waived as of the Effective Date.

(i) Seller has delivered or made available or shall deliver or make available to Purchaser complete copies of all the Due Diligence Materials to the extent in Seller's possession or under Seller's control with regard to the Option Parcel, and to the best of Seller's Knowledge, there are no other documents or information included within the definition of Due Diligence Materials that have not been provided to the Purchaser. To the best of Seller's Knowledge, none of such Due Diligence Materials contains any untrue statement of a material fact or omit to state a fact necessary to make the statement of fact contained therein not misleading in any material respects.

(j) At Closing, Seller warrants that, to the best of Seller's Knowledge, no material adverse event which would render incorrect any of the foregoing representations and warranties has occurred since the effective date of this Agreement.

Section 7.02 Purchaser's Representations and Warranties. Purchaser represents and warrants that:

(a) Purchaser is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Texas, is qualified to conduct business in the State of Texas, and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(b) The execution, delivery, and performance of this Agreement by Purchaser and all agreements, instruments, and documents herein provided to be executed by Purchaser on the Closing Date: (i) do not violate the bylaws of Purchaser, or any contract, agreement, commitment, lease, order, judgment, or decree to which Purchaser is a party; and (ii) have been duly authorized by the consent of the directors of Purchaser and the appropriate and necessary action has been taken by such directors on the part of Purchaser. The individual executing this Agreement and the instruments referenced herein on behalf of Purchaser have the legal power, right, and actual authority to bind Purchaser to the terms and conditions hereof and thereof. This Agreement is valid and binding upon Purchaser, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

(c) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Purchaser to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, writ, injunction, or decree which is binding upon Purchaser which has not been previously obtained.

(d) Purchaser is not a person or entity with whom United States persons or entities are restricted or prohibited from doing business under OFAC regulations (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not engaged in and shall not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(e) To the best of Purchaser's knowledge, there are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, nor any actions, suits, or other legal or administrative proceedings pending or, to the best of Purchaser's actual knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(f) The representations and warranties set forth in this Section 7.02 shall be continuing and shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made at that time. The representations and warranties set forth in this Section 7.02 shall survive the Closing and will not be affected by any investigation, verification, or approval by any party or anyone on behalf of any party to this Agreement.

Section 7.03 Bring Down Certificate. Seller shall deliver a bring down certificate reaffirming the accuracy and truthfulness of each of Seller's representations and warranties in Section 7.01 (or, if any has ceased to be true, so indicating), and providing that such representations and warranties shall survive the Closing and the delivery of the deed at Closing in accordance with the terms and conditions of this Agreement.

ARTICLE VIII
SELLER'S COVENANTS

Section 8.01 Leases. During the period from the Effective Date until the Closing Date, Seller shall not:

(a) Enter into any new Lease, submit or consider any proposal for a new Lease, or terminate, amend, or modify any Lease without Purchaser's prior written consent (except any Leases which are extended pursuant to the exercise by the Tenant of an option in such Lease and such option is exercised between the date hereof and the Closing Date).

(b) Enter into any new agreements with any brokers in connection with any prospective tenants for new leases from the date of this Agreement through the Closing Date, or earlier termination of this Agreement, without Purchaser's written consent and Purchaser shall assume at the Closing all obligations under such agreements. There shall be no apportionment between Seller and Purchaser of any commission payments arising under such agreements and originating from prospective tenants who after the Closing Date become tenants of the Option Parcel.

Section 8.02 Maintenance and Repairs. During the period from the Effective Date until the Closing Date, Seller shall cause the Option Parcel, and the Improvements, to be maintained in substantially the same manner as prior to the date of this Agreement pursuant to Seller's normal course of business. Seller shall not cause or make any new improvements, alterations, or demolition to the Option Parcel.

Section 8.03 Service Contracts. Following the Effective Date, Seller shall not enter into any new Service Contract which is not terminable on thirty (30) days' prior notice without Purchaser's prior written consent, which may be withheld in Purchaser's sole discretion. On or before the Closing, Seller shall, at its sole cost and expense, terminate all Service Contracts.

ARTICLE IX
RISK OF LOSS

Section 9.01 Risk of Loss. If prior to the Closing Date any portion of the Option Parcel shall be taken by condemnation or eminent domain or damaged or destroyed by fire or other casualty, Purchaser shall have the right to cancel this Agreement.

ARTICLE X
NOTICES

Section 10.01 Delivery of Notices. Unless specifically stated otherwise in this Agreement, all notices, demands, consents, approvals, waivers, or other communications (for purposes of this Section 10.01 collectively referred to as "**Notices**") shall be in writing and delivered to Purchaser or Seller, at the addresses set forth in Section 10.02, by one of the following methods:

(a) Personal delivery, whereby delivery is deemed to have occurred at the time of delivery;

(b) Overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier;

(c) Registered or certified mail, postage-prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or

(d) Electronic transmission (facsimile or email) provided that the transmission is completed no later than 5:00 p.m. Central Time on a Business Day and the original also is sent by personal delivery, overnight delivery or by mail in the manner previously described, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed.

Section 10.02 Parties Addresses.

(a) Unless changed in accordance with Section 10.02(b) of this Agreement, the addresses for all communications and notices shall be as follows:

If to Seller:

Name: Cross Ell Ranch Corporation
Address: 975 Rio Hondo Road, Tarpley, TX 78883
Attention: Roger M. Frazier
Email: crossellranchcorp@gmail.com

With a copy to:

Name: Baird, Crews, Schiller & Whitaker, P.C.
Address: 15 North Main Street, Temple, TX 76501
Attention: Sam Fulcher
Email: samfulcher@bcswlaw.com

If to Purchaser:

Name: Big Spring Economic Development Corporation
Address: 215 West Third Street, Big Spring, Texas 79720
Attention: Mark Willis

With a copy to:

Name: Brown & Hofmeister, L.L.P.
Address: 740 East Campbell Road, Suite 800,
Richardson, Texas 75081
Attention: Jeffrey L. Moore, Partner
Email: jmoore@bhlaw.net
Facsimile:

(b) Any party may, by notice given in accordance with this Article X, designate a different address or person for receipt of all communications or notices.

(c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

ARTICLE XI
REMEDIES

Section 11.01 Remedies.

(a) *Seller's Default; Remedies.* If Seller shall default in the performance of any of Seller's obligations to be performed under this Agreement and the Closing does not occur as a result thereof (a "**Seller's Default**"), Purchaser's sole and exclusive remedy shall be to either: (i) terminate this Agreement by delivery of written notice to Seller whereupon this Agreement shall terminate, the Deposit shall be refunded to Purchaser, and neither party shall have any further rights or obligations with respect to each other or this Agreement, except those that are expressly provided in this Agreement to survive the termination hereof; or (ii) continue this Agreement and seek specific performance of Seller's obligations hereunder, provided that any such action for specific performance must be commenced within sixty (60) days after such default, and if Purchaser prevails thereunder, Seller shall reimburse Purchaser for all reasonable legal fees, court costs, and all other reasonable costs of such action.

(b) *Purchaser's Default; Remedies*. If Purchaser fails to perform any of its obligations under this Contract (a "**Purchaser Default**"), Seller may terminate this Contract by giving notice to Purchaser on or before Closing and have the Deposit released to Seller; provided, however, Seller shall not exercise its remedies hereunder (except in the event that Buyer fails to timely perform its Closing obligations) unless and until 15 days have expired after Seller delivered notice of such default to Buyer and Buyer fails to cure such default. Notwithstanding the foregoing, the above-referenced notice requirement and cure period shall not function to extend the Due Diligence Period or Closing Date.

(c) *Termination of EDA or 380 Agreement Due to Default of City or Purchaser.* In the event the EDA or the 380 Agreement is terminated due to a default of the City or Purchaser, and such default remains uncured after any applicable notice and cure periods, Seller may elect, in its sole discretion, to terminate this Agreement by providing written notice to Purchaser and Title Company. Such termination shall be effective without need of any additional writing, and Title Company will release the Deposit to Seller without need of any additional writing. In such event, Seller may execute an instrument without the joinder of the City or Purchaser declaring that this Agreement and the Option Agreement have been terminated and record the instrument in the real property records of Howard County, Texas.

(d) Upon the release of the Deposit, and any interest accrued thereon, to either Purchaser or Seller, as the case may be, and reimbursement of Purchaser's Costs (if applicable), this Agreement shall be deemed null and void and no party hereto shall have any obligations to, or rights against, the other hereunder, except as expressly provided herein.

(e) If either party retains an attorney to enforce this Contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

ARTICLE XII
RESERVED

ARTICLE XIII
RESERVED

ARTICLE XIV
BROKERS

Section 14.01 Brokers. Purchaser and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, this transaction.

ARTICLE XV
MISCELLANEOUS

Section 15.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

Section 15.02 Merger; No Representations. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement is entered into after full investigation, no party is relying upon any statement or representation, not set forth in this Agreement, made by any other party.

Section 15.03 No Survival. Except as otherwise provided in this Agreement, no representations, warranties, covenants, or other obligations of Seller or Purchaser set forth in this Agreement shall survive the Closing and no action based thereon shall be commenced after the Closing.

Section 15.04 Business Days. Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs on a non-Business Day, then such period (or date) shall be extended until the next succeeding Business Day. As used herein, the term "**Business Day**" shall mean any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of Texas.

Section 15.05 Modifications and Amendments. This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Purchaser.

Section 15.06 Successors and Assigns; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser shall have the right to assign, transfer, or convey its rights and obligations under this Agreement or in the Option Parcel without the prior written consent of Seller, provided that any assignee shall assume all Purchaser's obligations hereunder and succeed to all Purchaser's rights and remedies hereunder and written notice to Seller of the assignment and assumption must be delivered to Seller prior to the Closing. If an assignee assumes all Purchaser's obligations under this Agreement in writing, then upon the effective date of the assignment of this Agreement to such assignee, Purchaser shall be released from all obligations under this Agreement.

Section 15.07 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 15.08 Further Assurances. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in the State of Texas and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

Section 15.09 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

Section 15.10 Headings. The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement.

Section 15.11 No Waivers. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 15.12 No Offer. This Agreement shall not be deemed an offer or binding upon Seller or Purchaser until this Agreement is fully executed and delivered by Seller and Purchaser.

Section 15.13 Waiver of Jury Trial. SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

Section 15.14 Time of the Essence. The parties hereto acknowledge and agree that, except as otherwise expressly provided in this Agreement, TIME IS OF THE ESSENCE for the performance of all actions (including, without limitation, the giving of Notices, the delivery of documents, and the funding of money) required or permitted to be taken under this Agreement.

Whenever action must be taken (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement, prior to the expiration of, by no later than, or on a particular date, unless otherwise expressly provided in this Agreement, such action must be completed by 5:00 p.m. Central Time on such date. However, notwithstanding anything to the contrary herein, whenever action must be taken (including, without limitation, the giving of Notice, the delivery of documents, or the funding of money) under this Agreement prior to the expiration of, by no later than, or on a particular date that is not a Business Day, then such date shall be extended until the immediately following Business Day.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

PURCHASER:

Big Spring Economic Development Corporation, a Texas non-profit corporation

By___________________________
Name:
Title:

SELLER:
Cross-Ell Ranch Corporation, a Texas corporation

By___________________________
Name:
Title:

SCHEDULES AND EXHIBITS

EXHIBITS

Exhibit B	Option Parcel
Exhibit H	Hazardous Substances
Exhibit L	Leases
Exhibit P	Excluded Personal Property

Exhibit B

That 40.0 acre tract of land, owned by Cross Ell Ranch Corporation, square in shape, located in Howard County, Texas, within the "Property," where the term "Property" is defined in the EDA, and at the northeast corner of Frazier Road and US Highway 87, in Howard County, Texas, abutting the north side of Frazier Road, abutting the east side of US Highway 87, in Howard County, Texas, including all rights appurtenant with respect to any strips and gores abutting the tract, and any land lying in the bed of any street, road, or avenue in front of, or adjoining the tract, to the center line thereof, and as seen in the attached illustration "Frazier Project Option Parcel" as the "Option Parcel."

Exhibit L

Leases

None.

Exhibit P

Personal Property

None.