

GROUNDWATER ESTATE PURCHASE CONTRACT

1. **PARTIES.** Kevin Wayne Mathias and Kimberly Michelle Honeycutt (“**Sellers**”) agree to sell and convey to City of Fritch, Texas, or its assigns (“**Buyer**”) and Buyer agrees to buy from Sellers the Groundwater Estate described below.

2. **SALES PRICE AND REIMBURSEMENT.** The Sales Price for the Groundwater Rights is \$487.50 per acre for 1893 acres, being Nine Hundred Twenty-Two Thousand Eight Hundred Thirty-Seven and 50/100 Dollars (\$922,837.50) (the “**Sales Price**”). The Sales Price will be adjusted for the number of acres of land if the total acres are more or less than 1893 acres. The Sales Price shall be paid by Buyer to Sellers by wire transfer of immediately available funds or certified funds at Closing.

3. **EARNEST MONEY.** No earnest money is required.

4. **GROUNDWATER ESTATE.**

A. **Real Property.** As used in this Contract, the term “Real Property” shall mean all of the following:

Section 21, Block Y-2, AB&M Survey, Carson County, Texas, containing 640 acres, more or less.

Section 23, Block Y-2, TT Ry. Co. Survey, Carson County, Texas, containing 640 acres, more or less.

Section 3, No Block Number, H&GN RR. Co. Survey, Carson County, Texas, containing 613 acres, more or less.

B. **Groundwater.** All of the underground water, percolating water, artesian water, and any other water from any and all depths and reservoirs, formations, depths, and horizons beneath the surface of the earth.

C. **Groundwater Rights.** All of the Groundwater now or in the future located in or under the Real Property, together with all associated rights related to the Groundwater, including, but not limited to, the right to capture, explore for, drill for, develop, withdraw, produce, transport, and/or otherwise beneficially use such Groundwater.

D. **Non-Exclusive Easement.** A non-exclusive easement and right-of-way (“Easement”) on, over, in, under, along, across and through the Real Property for the purposes of installing, constructing, inspecting, operating, maintaining, repairing, removing and replacing pipelines, electric lines and water wells, and roads as may be reasonably necessary in connection with the development, pumping, production, and transportation of Groundwater on and from the Real Property, together with the right of ingress and egress over, upon, and across the Real Property to engage in such activities as may be reasonably necessary in

connection with the foregoing. Sellers will cooperate with Buyer in its efforts to obtain utilities, including granting a separate easement to a utility provider, if required. This Easement shall be perpetual and assignable in whole and in part. Sellers acknowledge and agree (and the Easement shall so provide) that Buyer's payment of the Purchase Price at Closing shall constitute full payment for the Easement.

E. **Groundwater Estate.** All of the Groundwater Rights in, under, and that may be produced from the Real Property and the Easement described herein are hereinafter collectively referred to as "Groundwater Estate."

5. EXCEPTIONS, RESERVATIONS, CONDITIONS, AND RESTRICTIONS. The Groundwater Estate will be conveyed subject to the following exceptions, reservations, conditions, and restrictions after review and approval of Buyer as contemplated by Section 6: all existing rights of way, easements and prescriptive rights whether of record or not; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, and other instruments, other than liens and conveyances of the surface fee estate, that affect the Groundwater Estate; rights of adjoining owners in any walls, turn rows, or fences situated on a common boundary, any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements. Buyer will grant permission to the surface owner for two (2) wells to be used only for domestic and livestock purposes per section. Surface owner shall not be entitled to operate a concentrated animal feeding operation ("CAFO") on the Real Property.

As used herein, the term "domestic and livestock use" shall mean use of such Groundwater on the Real Property solely for household uses by Sellers, their heirs, successors and assigns, and Sellers' employees and their respective families and for watering of domestic and grazing animals on the Real Property. In all cases, "domestic and livestock use" shall be limited in terms of maximum production to a well pumping a maximum of 17.5 gallons per minute.

6. TITLE OPINION, SURVEY AND INSPECTION.

A. TITLE OPINION:

- (1) Buyer shall be entitled to obtain a title opinion from an attorney licensed in the State of Texas (the "**Title Opinion**").
- (2) Buyer shall have an opportunity to review the Title Opinion (the "**Review Period**") and related documents prior to Closing. Buyer may object at any time prior to the end of the Review Period to matters disclosed in the Opinion or survey, if any. Buyer's failure to object under this paragraph within the time allowed will constitute a waiver of Buyer's right to object to matters shown in the Opinion and/or the survey. Sellers may, but are not required to, cure the timely objections of Buyer within 30 days after Sellers receive the objections ("**Cure Period**") and the Closing Date will be

extended if necessary to accommodate this Cure Period. If objections are not cured by the expiration of the Cure Period or if Sellers provide written notice to Buyer of Sellers' election not to cure Buyer's objections, Buyer may, by providing written notice to Sellers within 5 days following the expiration of Sellers' Cure Period or receipt of Sellers' notice of election not to cure, whichever is earlier, (a) terminate this contract, in which case the earnest money will be refunded to Buyer and neither party shall have any further obligations to the other under this contract, or (b) waive the objections and close, in which case the objections which were not cured shall be deemed approved by Buyer that are either approved or waived by Buyer or to which Buyer fails to object. Buyer's failure to terminate this Contract prior to Closing shall be deemed a waiver of Buyer's objections and an election to close and accept such title as Sellers are able to convey.

- B. SURVEY: Buyer may obtain a survey of the Real Property at Buyer's option. If Buyer elects to survey the Real Property, the costs of the survey will be borne by Buyer.

7. GROUNDWATER ESTATE CONDITION. Buyer acknowledges that Buyer is purchasing the Groundwater Estate **AS-IS, WHERE IS, AND WITH ALL FAULTS and this acknowledgment shall be contained in deed delivered at closing.**

- A. The following provision will be included in the Deed that is delivered at Closing:

“EXCEPT AS EXPRESSLY PROVIDED IN THIS DEED, SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR MATTER CONCERNING THE GROUNDWATER ESTATE CONVEYED BY THIS DEED. BUYER IS RELYING UPON BUYER'S OWN INSPECTION OF THE GROUNDWATER ESTATE AND IS PURCHASING THE GROUNDWATER ESTATE CONVEYED BY THIS DEED “**AS IS, WHERE IS, AND WITH ALL FAULTS.**”

- B. If Buyer conveys or assigns any part of the Groundwater Estate to a third party, such third party shall be responsible for reasonable surface damages.

8. SELLERS' REPRESENTATION TO BUYER. Sellers represent to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

- A. Authority. Sellers warrant that Sellers have authority to convey the Groundwater Estate to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Sellers.
- B. Litigation. To Sellers' actual knowledge, there is no litigation pending or threatened against Sellers that might affect the Groundwater Estate or Sellers' ability to perform its obligations under this contract nor do Sellers have actual knowledge of any basis for any such action or claim.
- C. Violations of Laws or Contract. Sellers have not received notice of violation of any law, ordinance, regulation, or requirements affecting the Groundwater Estate or Sellers' use of the Groundwater Estate. To Sellers' actual knowledge, the execution, delivery and performance by Sellers of their obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under, any of the provisions of any law, governmental rule, regulations, judgment, decree or order by which the Sellers are bound, or by any of the provisions of any contract to which the Sellers are a party or by which the Sellers are bound or, by the Sellers' declaration of trust.
- D. Condemnation. Sellers have no actual knowledge of any condemnation suits or claims against the Groundwater Estate.
- E. Environmental Conditions. Sellers hereby represent to Buyer that, to Sellers' actual knowledge: (i) no mandatory statutory disclosure document concerning the environmental condition of the Groundwater Estate needs to be provided; (ii) the Groundwater Estate is not in any way contaminated with any hazardous material or substance; (iii) the Groundwater Estate does not appear on any state or federal CERCLA (Comprehensive Environmental Responsibility, Compensation, and Liability Act) or Superfund lists; (iv) neither Sellers nor any of Sellers' employees, agents, licensees or invitees have placed or permitted the placement of any hazardous materials or substances in, on or over the Groundwater Estate; (v) no other party has placed any hazardous materials or substances in, on or over the Groundwater Estate; (vi) the Groundwater Estate has not been used as a plant or site where hazardous substances are subjected to treatment, storage, disposal or recovery; and (vii) the Groundwater Estate is not subject to any federal, state or local "Superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the clean-up, removal or remediation of any hazardous substance from the Groundwater Estate. The term "hazardous material or substance" does not include chemicals, herbicides, fertilizers, manures, petroleum products, fuels and lubricants customarily used in farming practices in the County where the Groundwater Estate is situated.
- F. No Other Obligation to Sell the Groundwater Estate or Restriction against Selling the Groundwater Estate. Sellers have not obligated themselves to sell the Groundwater Estate to any other party other than Buyer. Sellers' performance of this contract will not cause a breach of any other agreement or obligation to which

Sellers are a party or to which they are bound.

- G. No Liens. On the Closing Date, the Groundwater Estate will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances (other than the Permitted Exceptions) of any nature and no work or materials will have been furnished to the Groundwater Estate that might give rise to mechanic's, materialman's, or other liens against the Groundwater Estate.

9. **OTHER PROPERTY.** Buyer agrees to release any and all rights and claims it may have to other land owned by Sellers except the Property that is the subject of this Groundwater Estate Purchase Contract.

10. **CLOSING.** Unless otherwise agreed by the parties, the closing ("**Closing**") of this sale shall occur on or before _____, 2021 (the "**Closing Date**") in the offices of Security Abstract Co., Clarendon, Texas. If Sellers desire to close earlier, Sellers shall give Buyer thirty (30) days notice. If curative action by Sellers with respect to title or the survey is requested pursuant to objections of Buyer with respect to such matters, the Closing Date shall be extended so as to accommodate Sellers' Cure Period. If Title Company is unable to have all title work completed by the Closing Date, it shall automatically be extended for thirty (30) days.

- A. Sellers shall execute and deliver a Special Warranty Deed conveying title to the Groundwater Estate to Buyer and showing no additional exceptions to those permitted in Section 5 and furnish tax statements or certificates showing no delinquent taxes on the Real Property.
- B. Buyer shall pay the Sales Price in good funds acceptable to Escrow Agent.
- C. Sellers and Buyer shall execute and deliver any bill of sale, notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the Closing and the issuance of the Title Opinion, including, without limitation, any affidavit required by the Title Company.
- D. There will be no liens, assessments, or security interests against the Groundwater Estate which will not be satisfied out of the sales proceeds.

11. **POSSESSION.** Buyer shall receive possession of the Groundwater Estate upon Closing and funding.

12. **SETTLEMENT AND OTHER EXPENSES.** The following expenses shall be borne by Sellers and Buyer as follows:

- A. **Sellers's Expenses.** Releases of existing liens, including prepayment penalties and recording fees; release of Sellers' loan liability; any, tax statements or certificates showing the payment of 2021 taxes, if applicable; and preparation of deed;

- B. **Buyer's Expenses.** Title Opinion, recording fees of the deed; the escrow fee, appraisal fee, and loan fee, and the cost of the survey, if Buyer chooses to survey.
- C. **Attorney Fees for Closing.** Each party shall pay their own attorney's fees associated with the transaction.

13. **TAXES.** Sellers will pay all taxes on the Real Property for 2021.

14. **DEFAULT.** If Buyer fails to timely comply with any provision of this Contract, Buyer will be in default, and Sellers may either enforce specific performance of this contract or terminate this Contract and receive the earnest money as liquidated damages, thereby releasing both parties from this Contract, provided, however, that the indemnity obligations of Buyer in Sections 7 and 13 will survive any such termination. If Sellers fail to comply with this Contract, Sellers will be in default and Buyer may either enforce specific performance of this Contract or terminate this Contract and have the earnest money (less the Independent Consideration) returned thereby releasing both parties from this Contract.

15. **ATTORNEY'S FEES.** The prevailing party in any legal proceeding brought under or with respect to the transaction described in this Contract is entitled to recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

16. **REPRESENTATIONS.** Sellers represent that as of the Closing Date there will be no liens, assessments, or security interests against the Groundwater Estate which will not be satisfied out of the Sales Price. If any representation of Sellers in this Contract is untrue on the Closing Date, this Contract may be terminated by Buyer and the Earnest Money including accrued interest will be refunded to Buyer. All representations contained in this Contract, except the representation contained in the first sentence of this Section 18, will terminate at Closing.

17. **AGREEMENT OF PARTIES.** This Contract contains the entire agreement of the parties and cannot be changed except by their written agreement. This Contract supersedes all prior negotiations, correspondence, understandings, and agreements among the parties hereto respecting the subject matter hereof.

18. **NOTICES.** All notices from the parties to each other must be in writing and are effective when mailed, via certified mail, postage prepaid or hand-delivered to Buyer or to Sellers as follows:

Buyer:	City of Fritch, Texas Attn: Drew Brassfield, City Manager Fritch, TX 79036 citymanager@fritchcityhall.com	With a copy to:	Slater Elza and Lynn Tate Underwood Law Firm, P.C. P. O. Box 9158 Amarillo, TX 79105-9158 lynn.tate@uwlaw.com
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Sellers: Kevin Wayne Mathias
P. O. Box 442
Fritch, TX 79036

Kimberly Michelle Honeycutt
P. O. Box 2371
Fritch, TX 79036

Jenni Winegarner
Vice President of Operations
Superior Land Network
7673 Canyon Drive
Amarillo, TX 79110

19. TAX FREE EXCHANGE. Sellers shall cooperate fully with Buyer in connection with any tax-free exchange that Buyer desires to complete. Sellers shall not be charged any expense on account of Buyer's exchange transaction. Buyer shall fully indemnify and hold Sellers harmless from any liability incurred by Sellers as a result of Sellers' participation in the tax-free exchange.

Buyer shall cooperate fully with Sellers in connection with any tax-free exchange that Sellers desire to complete. Buyer shall not be charged any expense on account of Sellers' exchange transaction. Sellers shall fully indemnify and hold Buyer harmless from any liability incurred by Buyer as a result of participation in the tax-free exchange.

20. ASSIGNMENT. Buyer may assign this Contract. All references in this Contract to Buyer include Buyer and its assigns.

21. REPRESENTATION. Slater Elza, Lynn Tate, and the Underwood Law Firm represent only Buyer in this transaction. Sellers have been advised to seek independent counsel in this matter.

22. ESCROW. The earnest money is deposited with Security Abstract Co., as escrow agent (the "**Escrow Agent**") with the understanding that Escrow Agent is not a party to this Contract and does not have any liability for the performance or nonperformance of any party to this Contract. Escrow Agent shall have no responsibility for determining the entitlement of the parties to the escrow fund. At Closing, the Escrow Agent shall disburse the net escrow fund to Sellers for application to the purchase price. Except as otherwise specifically provided herein, in the absence of Closing, the Escrow Agent shall disburse the Net Escrow Funds in accordance with written instructions jointly executed by the parties or, in the absence of such joint instructions, as directed by a final judgment of a court of competent jurisdiction. If one party makes written demand for the earnest money, Escrow Agent shall give notice of the demand by providing to the other party a copy of the demand. If Escrow Agent does not receive written objection to the demand from the other party within 30 days after notice to the other party, Escrow Agent shall disburse the Net Escrow Funds to the party making demand, provided, however, that in all such cases the Independent Consideration shall be distributed to Sellers. Escrow Agent shall be entitled to reimbursement from the fund for all expenses incurred by Escrow Agent in connection with the holding of the escrow funds. The term "**Net Escrow Funds**" as used herein means the total amount of funds held by the Escrow Agent hereunder less any expenses incurred by Escrow Agent in connection with the holding of such funds. If Escrow Agent complies with the provisions of this paragraph, each party hereby releases Escrow Agent from all claims related to the disbursal of the earnest money. Any notice by Escrow Agent hereunder shall be effective

when deposited in the U.S. mail, postage prepaid, certified mail, return receipt requested, addressed to the party to whom the notice is directed at such party's address shown herein. Any notice to the Escrow Agent shall be deemed effective upon receipt by the Escrow Agent.

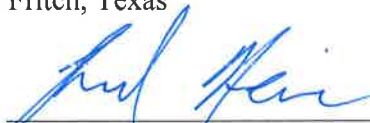
23. FAX AND ELECTRONIC SIGNATURES AND COUNTERPARTS. Execution and delivery of this Contract by delivery of a facsimile or electronic copy bearing the facsimile or electronic signature of any party hereto shall constitute a valid and binding execution by such party. Such facsimile or electronic copies shall constitute enforceable original documents. The Parties hereby may execute this Contract in any number of counterparts, each of which shall have the force and effect of an original; but all such counterparts shall constitute one and the same instrument.

EXECUTED the 24th day of June, 2021.

BUYER:

City of Fritch, Texas

By:


Richard Hein, Mayor

SELLERS:

Kevin Wayne Mathias

Kimberly Michelle Honeycutt