

RESOLUTION NO. 2006- 101 R

A resolution authorizing the City Manager to execute a Water Rights Transfer Agreement with the Paradise Ranch Landowners Association, Inc., providing for the City's acquisition of the right to divert 262.7 acre-feet of water per year from the Guadalupe River, in the amount of \$131,350, plus such closing and regulatory costs as are necessitated by the transaction; and declaring an effective date

THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute the attached **Water Rights Transfer Agreement** with the Paradise Ranch Landowners Association, Inc., providing for the City's acquisition of the right to divert 262.7 acre-feet of water per year from the Guadalupe River, in the amount of \$131,350, plus such closing and regulatory costs as are necessitated by the transaction, with such changes as are approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this the 5th day of July, 2006.

AYES: **7**

NAYS: **0**

ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the 5th day of July, 2006.



ATTEST

Scarlet Swoboda
SCARLET SWOBODA, City Secretary

Will Armstrong
WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:
David Atmar-Smith
DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department
 Department of Utilities
 Department of Environmental Services

Copies Sent: **JULY 20, 2006**

WATER RIGHTS TRANSFER AGREEMENT

This Water Rights Transfer Agreement (the "Agreement") is made and entered into by and between the Paradise Ranch Landowners Association, Inc., a Texas non-profit corporation (hereinafter sometimes referred to as "Association") and the City of Victoria, a Texas Municipal Corporation with principal offices in Victoria, Texas ("Victoria") on this ____ day of _____, 2006 (the "Effective Date"), as follows:

RECITALS:

WHEREAS, the Association owns certain rights to appropriate water from the Guadalupe River in Victoria County, Texas as certificated through Certificate of Adjudication No. 18-3862 from the State of Texas, authorizing the withdrawal of 262.70 acre-feet of water per annum from the Guadalupe River for irrigation of 262.70 acres out of 805.57 acres of land located in the Francisco Ramon Grant, Abstract 95, Victoria County, Texas; and

WHEREAS, such rights were procured by the Association from its predecessor in title, Big Rack, Ltd., through a warranty deed dated March 12, 1991, which deed is recorded in the Deed Records of Victoria County in Vol. 1591, beginning at Page 294; and

WHEREAS, by Certificate of Adjudication 18-3862, dated May 25, 1984, the Big Rack, Ltd. was authorized to divert and use not to exceed 400 acre-feet per annum from the Guadalupe River for irrigation purposes to irrigate 400 acres of land out of a 1226.57 acre tract of land located in the Francisco Ramon Grant, Abstract 95, Victoria County, Texas, as more specifically described in that Certificate of Adjudication.; and

WHEREAS, through various sales, Big Rack, Ltd. sold land from the 1226.57 acres and a portion of its water rights; however it retained 262.7 acre feet of water rights out of 805.57 acres of land which included the 400 acres to be irrigated which it sold to the Association, in the deed aforesaid.

WHEREAS, Victoria is a municipality located in Victoria County, Texas and formed under the laws of the State of Texas; and

WHEREAS, Victoria owns several off-channel reservoirs that it uses for the storage of water diverted from the Guadalupe River under Permit No. 5466, as amended; and

WHEREAS, Victoria currently uses both surface water and groundwater for its municipal uses; and

WHEREAS, Victoria desires to acquire the Association's water rights for impounding water for storage and diverting water for municipal use, and the Association desires to transfer such water rights to Victoria; and

WHEREAS, this Agreement is to set forth the terms and conditions with respect to the transfer of all of these water rights from the Association to Victoria.

EXHIBIT "A"

NOW, THEREFORE, for and in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Transfer of Water Rights

- 1.1 After the Effective Date, the parties shall jointly seek to obtain from the Texas Commission on Environmental Quality (“TCEQ”) a transfer of the Association’s existing water right to Victoria. The right as transferred shall have the following rights or conditions:
- (a) It shall authorize the impoundment of water in Victoria’s off-channel reservoir not to exceed 155 acre-feet of water;
 - (b) It shall authorize at least the diversion maximum of **262.7 acre-feet** of water per annum from the Guadalupe River at the diversion point in Victoria’s Permit No. 5466, as amended;
 - (c) It shall be authorized for use for municipal purposes;
 - (d) It shall have a maximum diversion rate of 8.91 cfs (4,000 gpm);
 - (e) It shall retain the Priority Date of December 12, 1951;
 - (f) It shall be authorized for either (i) diversion and use or (ii) diversion and storage in the Reservoir and subsequent use, at the option of the permittee;
 - (g) The permittee for such rights shall have the right, but not the obligation, to impound and store in the Reservoir 155 acre-feet of water; and
 - (h) The permittee for such rights shall be changed to Victoria.
- 1.2 Victoria shall bear the cost of amending the water right.
- 1.3 The Association shall grant and convey the rights granted herein by general warranty deed (the “Warranty Deed”), to be in a form mutually acceptable to the Association and Victoria.
- 1.4 Victoria will, at its own expense, purchase an owners policy of title insurance on the rights to be transferred but the Association shall be obligated as a condition of closing to cure within a reasonable time any marketable defects in the title.
- 1.5 The Association shall execute such corporate minutes and authorizations as are appropriate and necessary to convey a good and marketable title.

Section 2. Consideration

- 2.1 Subject to the conditions set forth in Section 4, as consideration for the rights and privileges granted to Victoria, Victoria shall pay to the Association the following:

EXHIBIT “A”

- a. The total price of **\$131,350** which includes
- b. The sum of \$ _____ as earnest money to bind this sale, to be deposited by Victoria with Stewart Title of Victoria, Inc., as escrow agent, payable upon execution of this instrument, and
- c. The balance of \$131,350 to be due and payable on the Closing Date.

The above consideration shall be the sole and only consideration due the Association hereunder for the rights and privileges granted to Victoria, except as otherwise set forth herein.

Section 3. Closing Date

The Closing Date shall be twenty (20) days after the date that the order (the "Order") transferring the water rights to Victoria is entered by TCEQ. The closing shall be held at the offices of the City Attorney, 105 W. Juan Linn St., Victoria, Texas 77901, second floor, Legal Department.

Section 4. Conditions Precedent to Obligation of Victoria

All obligations of Victoria to be performed at closing under this Agreement are subject to the satisfaction of the following conditions precedent on or prior to the Closing Date:

- (a) The Order transferring the water rights to Victoria, including the rights or conditions set forth in Section 1.1, has been entered by TCEQ. In the event that this condition cannot be met, Victoria shall have the right to terminate this contract and to receive back its earnest money or to waive, which waiver must be made in writing to the Association, the conditions set forth in Section 1.1 and seek to renegotiate this purchase price or seek specific performance.
- (b) The Association shall have delivered to Victoria **ten (10) days prior** to the Closing Date the Warranty Deed and such other deeds, assignments, and other good and sufficient instruments of conveyance and transfer, in a form mutually acceptable to the Association and Victoria, as shall be necessary to vest a good and marketable title to the rights free and clear of all liens and encumbrances and in accordance with the terms of this Agreement.

Section 5. Miscellaneous

- 5.1 Except as otherwise provided herein, no assignment of this Agreement in whole or in part for any purpose may be made or granted by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, either party shall be authorized to assign this Agreement to any of its affiliates or to any lender as security for any loan; provided, further, that the assigning party will be liable for all obligations of the assigning party to be performed hereunder to the extent not performed by such assignee in accordance with the terms hereof.
- 5.2 Any notice required by this Agreement to be sent to either of the parties must be directed as follows:

ASSOCIATION: Paradise Ranch Landowners Association, Inc.
Attn.: _____
P.O. Box 2562
Victoria, TX 77902-2562

VICTORIA: City of Victoria
Attn: David Atmar Smith, City Attorney
P.O. Box 1758
Victoria, TX 77902-1758

Either party may change its own above address by written notice to the other party.

- 5.3 The parties shall, on request, cooperate with one another by delivering any additional documents and instruments and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement.
- 5.4 This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties hereto and their respective successors and permitted assigns.
- 5.5 This Agreement contains the entire agreement between the parties. No representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be of any force or effect.
- 5.6 Victoria shall have the right to enforce this agreement by specific performance.
- 5.7 Ad valorem taxes shall be prorated as to the time of Closing.
- 5.8 The parties agree to execute and file a Memorandum of this Agreement in the Official Records of Victoria County, Texas.

EXECUTED this ____ day of _____, 2006.

PARADISE RANCH LANDOWNERS ASSOCIATION, INC.

By: _____
Name: _____, It's President

Attest: _____
Name: _____ It's Secy.

CITY OF VICTORIA

Attest:

By: _____
Name: Denny L. Arnold, City Manager
Approved as to Form:

City Secretary

David Atmar Smith, City Attorney