

RESOLUTION 15-21

BE IT RESOLVED that the appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Real Estate Sales Contract between the City and Tote Holdings, LLC, a Delaware limited liability company, relating to **the purchase of property located at 536 Richard Jackson Boulevard**, for the purchase amount of Nineteen Thousand Six Hundred Thirty Five Dollars (\$19,635), in substantially the form of the documents attached and presented to the Council today, draft dated September 24, 2014, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

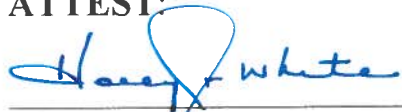
THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 13 day of November, 2014.

CITY OF PANAMA CITY BEACH

By: 
Gayle F. Oberst, Mayor

ATTEST:



Holly White, City Clerk

MEMORANDUM

To: Mario Gisbert, City Manager

From: John Alaghemand, P.E., Assistant City Manager/CRA Manager

Subject: **Real Estate Sales Contract for Purchase of Right-of-Way from TOTE Holdings, LLC for the Front Beach Road Segment 2 Improvement Project**

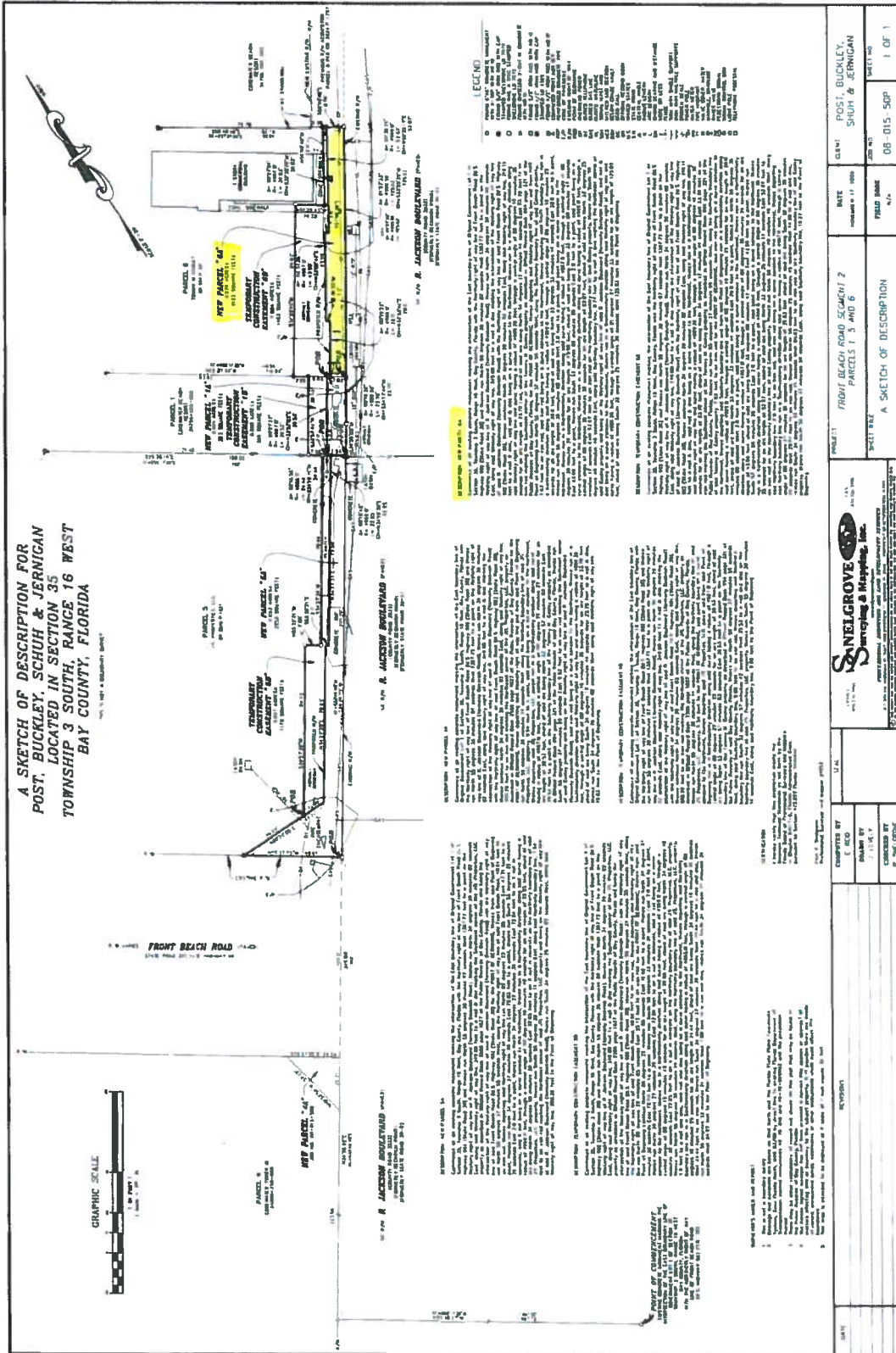
Date: November, 7, 2014

As a part of the property acquisition efforts for the Front Beach Road Segment 2 Improvement Project, Chandler & Associates, Inc. has prepared an appraisal for a right-of-way strip along the TOTE Holdings, LLC's property on Richard Jackson Blvd (**Exhibit A, parcel 6A**). Based on the Appraisal, the estimated fair market value of the required property (approximately 1234 square feet) is \$15,900.00. The City has previously approved a standard incentive schedule (Resolution 06-02) for calculating appropriate offers to landowners who willingly sell their land to the City for the right-of-way improvement purposes. The calculated incentive amount for the proposed property acquisition is \$8,735.00 to be added to the appraisal estimated price, which brings the total purchase price to \$24,635.00. The estimated purchase price of \$24,635.00 has been accepted by the property owner, TOTE Holdings, LLC.

It is recommended that the Council approve the attached Real Estate Sales Contract to purchase parcel 6A (approximately 1,123 square feet) in the amount of \$24,635.00 for the Front Beach Road Segment 2 Improvement Project and authorize the City Manager to execute the Contract.

Attachments: Resolution and Sales Agreement

Exhibit A



REAL ESTATE SALES CONTRACT

STATE OF FLORIDA

COUNTY OF BAY

THIS REAL ESTATE SALES CONTRACT (this "Contract") is made by and between TOTE HOLDINGS, LLC, ("Seller") and the CITY OF PANAMA CITY BEACH, FLORIDA, a municipal corporation ("Purchaser"), upon the terms and conditions set forth herein.

ARTICLE I

1.01. Seller hereby sells and agrees to convey by statutory warranty deed (the "Deed"), and Purchaser hereby agrees to purchase and pay for, all that certain real estate located in Bay County, Florida described as follows:

SEE ATTACHED EXHIBIT A—Description Parcel 6A
(sometimes referred to as the "Property").

Seller also sells and agrees to convey, and Purchaser hereby agrees to pay for, all and singular, the rights and appurtenances pertaining to the Property, including any right, title and interest of Seller in and to adjacent streets, alleys, or rights-of-way, and including any rights of Seller to any oil, gas, and other minerals, together with any improvements and fixtures situated on and attached to the Property or appurtenant thereto (all of such real property, leases, rights, and appurtenances being hereinafter collectively referred to as the "Property"), for the consideration and upon the terms and conditions hereinafter set forth.

ARTICLE II

PURCHASE PRICE

Amount of Purchase Price

2.01. The purchase price (herein called the "Purchase Price") for said Property shall be the sum of TWENTY FOUR THOUSAND SIX HUNDRED THIRTY FIVE DOLLARS AND NO CENTS (\$24,635.00).

Deposit

2.02. Purchaser shall deposit with Harrison Sale McCloy, Chtd. the sum of Five Thousand Dollars (\$5,000.00) as an Escrow Deposit that shall be credited to the Purchaser at Closing.

Payment of Purchase Price

2.03. Purchaser shall pay at Closing the sum of Nineteen Thousand Six Hundred Thirty Five Dollars (\$19,635.00) in cash or certified funds.

ARTICLE III

PURCHASER'S OBLIGATIONS

Conditions to Purchaser's Obligations

3.01. The obligation of Purchaser hereunder to consummate the transaction contemplated hereby is subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part by Purchaser at or prior to the closing):

Title Commitment

3.02. Five (5) days prior to Closing, Purchaser shall secure, at Purchaser's expense, a title insurance commitment (A Title Commitment). The Title Commitment shall commit to issue to Purchaser an owner's title insurance policy in an amount equal to the total Purchase Price of the

Property upon recording of the deed hereinafter called for, free and clear of all liens and encumbrances except the standard exceptions or qualification usually printed in the title insurer's commitment form and permitted exceptions identified herein. Purchaser shall have five (5) days from the date of receiving the Title Commitment to examine same and, if the title is found to be defective, Purchaser shall, within (2) days, notify Seller in writing specifying the defects and Seller shall have thirty (30) days from receipt of notice within which to cure said defects. If Seller is unsuccessful in removing the defects within that time to the reasonable satisfaction of Purchaser, Purchaser shall have the option of either (i) accepting title as it then is, including the title defect, or (ii) terminating this Contract whereupon Purchaser and Seller shall be released for all obligations under the Contract. Seller agrees that it will in good faith use due diligence to correct the title defect within the time provided.

Access and Inspection Rights

3.03. Purchaser may, prior to the Closing Date, personally or through its employees, representatives and consultants, make such inspections, tests and investigations of the Property (including, without limitation, environmental inspections, borings and physical samplings) as Purchaser deems necessary or desirable, and Seller shall cooperate fully in such inspections, tests, investigations and examinations and shall instruct its employees, representatives and agents to cooperate fully. Such inspections, tests, investigations and examinations shall be done at reasonable times and under reasonable circumstances.

Furthermore, from and during this Contract, Purchaser shall have the right to enter upon the Property for purposes of conducting any such inspections, tests, and investigations of the Property as Purchaser deems necessary or desirable and such right in Purchaser shall extend to Purchaser's

agents, representatives, consultants, and contractors. Any damage to the Property or improvements caused by any such entry, inspections, tests, or investigations shall be repaired immediately by Purchaser. Purchaser shall indemnify Seller and hold Seller harmless from and in respect of any loss, costs, damage or expense as a result of any claim asserted against Seller arising out of such entry, inspections, tests or investigations.

Buyer understands that it is purchasing the Property in As-is, where-is condition and that no stated or implied representations or warranties of any nature whatsoever have been made by the Seller pertaining to the size, shape, location or condition of the Property, or pertaining to the site, environmental matters, toxic waste, radon gas, etc.

ARTICLE IV

CLOSING

4.01. The Closing shall be at the offices of Harrison Sale McCloy, 304 Magnolia Avenue, Panama City, Florida, on or before [], unless the parties agree in writing to another date and place for Closing.

4.02. Real property taxes, water rates and sewer charges, and rents, if any, shall be prorated and adjusted on the basis of thirty (30) days of each month, Seller to have the last day, to the date of Closing. Taxes for all prior years shall be paid by Seller. If the Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, with the proration to be adjusted between the parties based on actual taxes for the year in which Closing occurs at the time such actual taxes are determined. Assessments, either general or special, for improvements completed prior to

the date of Closing, whether matured or unmatured, shall be paid in full by Seller. All other assessments shall be paid by Purchaser.

4.03. At the Closing, Seller shall:

(a) Deliver to Purchaser a duly executed and acknowledged special warranty deed conveying good and marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, other than the mortgage and liens in favor of The Bank which Seller shall discharge or release prior to Closing.

(b) Deliver to Purchaser an Affidavit of Non-Foreign Status of Seller executed by Seller.

(c) Deliver to Purchaser and the Closing Agent affidavits by knowledgeable persons that there are no liens and encumbrances, existing or contingent, against the Property.

(d) Deliver to Purchaser possession of the Property.

4.04. At the Closing, Purchaser shall:

(a) Deliver to Seller the cash portion of the Purchase Price.

4.05. Each party shall pay any attorney's fees incurred by such party. Purchaser shall pay for the following: documentary tax stamps affixed to the Deed; the cost of the Title Insurance Policy and related charges for examination, search and closing; and the cost of recording the Deed. All other costs and expenses of Closing the sale and purchase and loans shall be borne and paid by the party requesting the item or service.

ARTICLE V

LEGISLATIVE ACTION

5.01. This agreement and purchase is wholly contingent upon the Panama City Beach City Council voting to approve this Contract on or before []. If the decision is "yes," this Contract shall continue in full force and effect. If the decision is "no," this Contract shall terminate and neither party shall have any further obligations hereunder.

ARTICLE VI

BREACH BY SELLER

6.01. If Seller fails or refuses to comply fully with the terms of this Contract, because of failure to clear title, as outlined in Paragraph 3.02 contained herein, to Property or for any other cause other than Purchaser's default, Purchaser may, at its option, (a) rescind this Contract and recover from Seller the Deposit, or (b) proceed with this Contract and take the Property as-is, or (c) pursue a suit for specific performance.

ARTICLE VII

BREACH BY PURCHASER

7.01. If Purchaser shall default in the performance of any of the terms and conditions of this Contract, or if the Closing shall not occur through the fault of Purchaser, Seller may, as their sole remedy, retain the Deposit as liquidated damages, and this Contract shall be cancelled.

ARTICLE VIII

MISCELLANEOUS

Survival of Covenants

(a) The terms of this Agreement shall merge into the closing documents, notably, the deed, and shall not survive the Closing.

Notice

(b) Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Seller or the Purchaser, as the case may be, at the addresses set forth herein below:

IF TO SELLER:

[REDACTED]

IF TO PURCHASER:

Mario Gisbert, City Manager
John Alaghemand, CRA Manager
City of Panama City Beach
110 South Arnold Road
Panama City Beach, Florida 32407

With Copy To:

Amy E. Myers, Esquire
Harrison Sale McCloy
304 Magnolia Avenue
Post Office Box 1579
Panama City, Florida 32402

Governing Law and Jurisdiction

(c) This Contract shall be construed and enforced in accordance with the laws of the State of Florida.

Parties Bound

(d) This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Contract.

Legal Construction

(e) In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Integration

(f) This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter. This Contract cannot be modified or changed except by the written consent of all of the parties.

Time of Essence

(g) Time is of the essence of this Contract. All times calculated in days hereunder shall be calendar days.

Attorney's Fees

(h) Any party to this Contract which is the prevailing party in any legal proceeding against any other party to this Contract brought under or with relation to this Contract or transaction shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

Gender and Number

(i) Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

Date of Contract

(j) The term "date of this Contract" as used herein shall mean the latest of the dates on which this Contract is fully signed by Seller or Purchaser, as indicated by their signatures below, which latest date shall be the date of final execution and agreement by the parties.

[rest of page intentionally left blank]

Executed on the dates set forth at the signatures of the parties hereto.

DATED as to Seller this 3rd day of November, 2014.

Witnesses

Alfreda Brookhaus

Sherree N. Noles



SHEREE N. NOLES
MY COMMISSION # FF 007553
EXPIRES: May 26, 2017
Bonded Thru Budget Notary Services

SELLER:
TOTE HOLDINGS, LLC

[Signature]
[MANAGER]

DATED as to Purchaser this _____ day of _____, 2014.

ATTEST:

PURCHASER:
PANAMA CITY BEACH, FLORIDA

Holly J. White, City Clerk

By: _____
Mario Gisbert, City Manager

EXHIBIT A

DESCRIPTION: NEW PARCEL 6A

Commence at an existing concrete monument marking the intersection of the East boundary line of Original Government Lot 1 of Section 35, Township 3 South, Range 18 West, Bay County, Florida with the Northerly right of way line of Front Beach Road (U.S. Highway 98) (State Road 30) and thence run North 55 degrees 38 minutes 07 seconds West 1387.72 feet to a point on the Westerly right of way line of R. Jackson Boulevard (formerly Beckrich Road), thence run North 34 degrees 26 minutes 02 seconds East, along said Westerly right of way line, 349.80 feet to a nail & disc marking the intersection of the Westerly right of way line of said R. Jackson Boulevard (formerly Beckrich Road) with the Northerly right of way line of said Front Beach Road (U.S. Highway 98) (State Road 30), thence continue North 34 degrees 26 minutes 02 seconds East, along said Westerly right of way line, 216.11 feet to a nail & disc, said nail & disc being on a curve concave to the Northwest, thence run in a Northeasterly direction along said Westerly right of way line and curve having a radius of 4909.26 feet, through a central angle of 00 degrees 16 minutes 36 seconds for an arc length of 23.70 feet, chord of said arc being North 34 degrees 17 minutes 44 seconds East 23.70 feet to an iron rod marking the Southeast corner of the Tommy M. Cooley property as described in Official Record Book 994 page 321 of the Public Records of Bay County, Florida, for the POINT OF BEGINNING, thence departing said Westerly right of way line and from said Point of Beginning run North 55 degrees 37 minutes 59 seconds West, along the Southerly boundary line of said Cooley property, 7.82 feet to an iron rod, said iron rod being on a curve concave to the Northwest, thence departing said South boundary line run in a Northeasterly direction along said curve having a radius of 4989.0 feet, through a central angle of 00 degrees 19 minutes 22 seconds for an arc length of 28.0 feet, chord of said arc being North 33 degrees 33 minutes 41 seconds East 28.0 feet to a point, thence run North 56 degrees 36 minutes 00 seconds West 2.0 feet to a point, said point being on a curve concave to the Northwest, thence run in a Northeasterly direction along said curve having a radius of 4967.0 feet, through a central angle of 00 degrees 30 minutes 26 seconds for an arc length of 43.98 feet, chord of said arc being North 33 degrees 08 minutes 47 seconds East 43.98 feet to a point, thence run South 57 degrees 08 minutes 28 seconds East 2.0 feet to a point, said point being on a curve concave to the Northwest, thence run in a Northeasterly direction along said curve having a radius of 4989.0 feet, through a central angle of 00 degrees 36 minutes 35 seconds for an arc length of 52.87 feet, chord of said arc being North 32 degrees 35 minutes 17 seconds East 52.87 feet to an iron rod on the Northerly boundary line of said Cooley property, thence run South 56 degrees 48 minutes 46 seconds East, along said Northerly boundary line, 8.74 feet to a nail & disc marking the Northeast corner of said Cooley property and being on the Westerly right of way line of said R. Jackson Boulevard (formerly Beckrich Road), said nail & disc being on a curve concave to the Northwest, thence run in a Southwesterly direction along said Westerly right of way line and curve having a radius of 4909.26 feet, through a central angle of 01 degrees 27 minutes 33 seconds for an arc length of 125.03 feet, chord of said arc being South 33 degrees 25 minutes 39 seconds West 125.03 feet to the Point of Beginning.

