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AGENDA ITEM REQUEST FORM

Hays County Commissioners Court

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

AGENDA ITEM

Discussion and possible action to authorize the County Judge to approve the Option Agreement and Participation Agreement to be utilized during preliminary stages of Right of Way acquisitions on select projects.

ITEM TYPE

ACTION-MISCELLANEOUS

MEETING DATE

April 30, 2013

AMOUNT REQUIRED

LINE ITEM NUMBER

AUDITOR USE ONLY

AUDITOR COMMENTS:

PURCHASING GUIDELINES FOLLOWED: N/A

AUDITOR REVIEW: N/A

REQUESTED BY

Ingalsbe

SPONSOR

INGALSBE

CO-SPONSOR

N/A

SUMMARY

Summary to be provided in open court.

FILED:

04 30 13

HAYS COUNTY COMMISSIONERS' COURT
Resolution # 28990 VOL V PG 150

COLLINHAYS COUNTY LOOP
ROADWAY PARTICIPATION AGREEMENT

This Roadway Participation Agreement ("Agreement") is entered into between CollinHays County, Texas (the "County") and John R. Albers ("Albers"). The County and Albers are sometimes individually referred to as a "Party" and collectively referred to as the "Parties." Each of the Parties confirms that it has the authority to enter into this Agreement and the ability to perform its obligations under this Agreement, without the further approval or consent of any other person or entity.

Recitals

WHEREAS, the County is in the process of designating the proposed alignment and improvements for the Collin ~~County~~ Loop (the "Roadway") and, as a portion of those improvements and the proposed alignment would intend to widen and improve the portion of County Road 705 (the "Roadway Improvements"), as depicted on the attached **Exhibit A**; and

WHEREAS, John R. Albers is considering developing a mixed-use, master-planned development, a portion of which will abut the Roadway; and

WHEREAS, in connection with the possible development and in recognition of the impact that the such development will have on traffic demands on the Roadway, John R. Albers has agreed to dedicate and/or reserve certain portions of right-of-way in the areas shown on **Exhibit "1-A"**.

WHEREAS, the Parties desire to put their agreements regarding these matters in writing;

NOW, THEREFORE, in consideration of the mutual covenants, obligations and benefits set forth in this Agreement, the Parties agree as follows:

Section 1. Dedication of Right-of-Way.

(a) Albers agrees to dedicate to the County real property, not including any existing improvements thereon, which is sufficient enough to provide for a ~~120-foot corridor~~ to be utilized as right-of-way for the future expansion of CR 705. ("Right-of-Way Property"), at the location shown on Exhibit 1-A. The dedication of the right-of-way shall occur as soon as possible after the approval of this Agreement by the County and after a survey as prepared by Albers, but shall not include mineral interests or water rights under the surface of the real property.

(b) Simultaneously with the dedication of the right-of-way, the parties will enter into a lease allowing Albers to utilize the Right-of-Way Dedication Property, and any improvements thereon (hereinafter, the "Lease") in the form attached hereto as Exhibit "B."

Section 2. Option Agreement.

(a) In addition to the granting of the Right-of-Way Property, Albers _____ agrees to simultaneously enter into the Option Agreement in the form attached hereto as Exhibit "C" with the County wherein Albers _____ agrees to grant to the County the option, for a ~~twenty (20)~~ _____ year term, to acquire up to an additional ~~three hundred and eighty feet (380')~~ _____ of right-of-way ("Option Property") as shown on **Exhibit "I-A"**. The Option Agreement will allow the County, at its discretion, to acquire all or a portion of said Option Property within said ~~twenty (20)~~ _____ year term for \$~~6,000.00~~ _____ per acre, subject to a final survey performed by the County.

(b) Albers _____ agrees to not develop or otherwise improve the Option Property, except for driveway access subject to ~~Collin~~Hays County regulations, for the term of the Option Agreement or for any extensions. Albers _____, however, reserves the right to convey the Option Property with the express written consent of the County, which consent will not be unreasonably withheld. The Option Agreement is intended to be binding on any future owner or assignee of the Option Property during the term of the Option.

Section 3. Miscellaneous.

(a) Any notice given hereunder by any Party to another must be in writing and may be given by personal delivery or by certified mail, return receipt requested, when delivered or mailed to the appropriate Party's Designated Representative at the addresses specified in Section 4, with copies as noted below:

County: CollinHays County, Texas

with copy to: _____

John R. Albers _____
3825 Gillon Avenue
Dallas, Texas 75205

with copy to: _____

Formatted: Indent: Left: 0", First line: 0.5",
Don't adjust space between Latin and Asian text

A Party may change its address for purposes of notice by giving at least five days written notice of the new address to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

(b) As used in this Agreement, the masculine, feminine, or neuter gender and the singular or plural number will each be deemed to include the others.

(c) This Agreement, along with the Option Agreement and the Lease, contains the entire agreement between the Parties, and supersedes all prior negotiations, agreements, representations, and understandings, if any, between the Parties regarding these matters. This Agreement may not be amended or terminated except by a further written agreement duly executed by the Parties. However, any consent, waiver, approval or similar authorization will be effective if signed by the Party to be bound by the consent, waiver, approval, or authorization.

(d) No official, representative, agent, or employee of the County has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the commissioners court of the County.

(e) The Parties agree to execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(f) If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the County under this Agreement, or the act of conduct of any person or persons not a party or privy hereto, then such Party will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

(g) To the extent allowed by law, each Party will be responsible for, and will indemnify and hold harmless the other Party and its officers, agents, and employees from any and all claims, losses, damages, causes of action, lawsuits or liability resulting from the indemnifying Party's acts or omissions of negligence or misconduct or in breach of this Agreement.

(h) The Parties acknowledge that, in the event of default on any obligation under this Agreement, remedies at law will be inadequate and that, in addition to any other remedy at law or in equity, each Party will be entitled to seek specific performance of this Agreement.

(i) This Agreement will be construed under the laws of the State of Texas and all obligations of the Parties hereunder are performable in ~~Collin~~Hays County, Texas. Any suits pursued relating to this Agreement will be filed in a court of ~~Collin~~Hays County, Texas.

(j) Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective will not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof will be confined to the clause, sentence, provision, paragraph, or article held to be invalid, illegal, or ineffective.

(k) This Agreement will be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns. No Party may assign its rights or obligations under this Agreement without the written consent of the other Party and such consent should not be unreasonably withheld.

(l) Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto, any benefits, rights or remedies under or by reason of this Agreement.

(m) This Agreement is effective upon execution by both of the Parties. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original and all of which will together constitute one and the same instrument.

(n) The following exhibits are attached to and incorporated into this Agreement for all purposes:

Exhibit A:
Exhibit A-1:
Exhibit B – Lease of Real Property
Exhibit C – Option Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this ____ day of _____, 2013~~08~~.

~~COLLIN~~HAYS COUNTY, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

~~ALBERS~~ _____

By: _____
John R. Albers

Date: _____, 2008~~2~~013

OPTION AGREEMENT

THIS OPTION AGREEMENT ("Agreement"), is entered into by ~~John R. Albers~~ _____ ("Seller"), and ~~Collin~~Hays County, Texas, a political subdivision, its nominees, designees, successors, or assigns to the extent herein provided ("Buyer") on the last date acknowledged below.

RECITALS

Whereas, Seller is the owner of the real property described in Section 1.2 hereof (the "Property");

Whereas, Buyer and Seller have entered into that certain ~~Collin~~Hays County Loop Roadway Participation Agreement (the "Participation Agreement");

Whereas, pursuant to the Participation Agreement, Buyer acquired from Seller that certain 120' corridor as described therein (the "Corridor Property");

Whereas, pursuant to the Participation Agreement, Buyer and Seller have entered into a Lease of Real Property (the "Lease") related to the Corridor Property ; and

Whereas, pursuant to the Participation Agreement, Seller desires to grant to Buyer an exclusive option to purchase the Property in accordance with the terms and conditions hereinafter set forth.

AGREEMENT

IN CONSIDERATION of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE I

GRANT OF OPTION

Section 1.1 Option and Term.

(a) As of the Effective Date, Seller grants to Buyer an exclusive option (the "Option") to purchase all, or any portion of, the Property from Seller at Closing (as hereinafter defined), subject to the terms, covenants and conditions set forth herein.

(b) The "Option Period" shall commence on the effective date of the Agreement and expire ~~twenty (20)~~ _____ years thereafter.

(c) Buyer shall have the right to extend the Option Period for a period of ~~ten (10)~~ _____ additional years, however the Purchase Price for the Property will be as modified in Section 1.4 herein.

Section 1.2 The Property. The Property consists of approximately ~~37~~ _____ acres of land as shown on Exhibit "A" attached hereto and made a part hereof (with the precise acreage and net square footage to be determined by and adjusted in accordance with the Survey as hereinafter set forth), together with any improvements thereon, and appurtenances attached thereto, easements, rights-of-way, and rights, but excluding, the mineral and/or mining and/or water rights owned by Seller and all of the executive rights to said minerals and/or water rights. Seller shall sell and Buyer shall buy the Property on an "AS IS" basis including as to environmental matters.

Section 1.3 Exercise. Buyer may exercise the Option by giving Seller written notice (the "Option Notice") prior to the expiration of the Option Period of Buyer's intent to purchase the Property, or any portion thereof (the "Exercised Property"). If Buyer fails to give Seller the Option Notice prior to the expiration of the Option Period, Buyer shall be deemed conclusively to have waived the right to exercise the Option. Upon the exercise of the Option by Buyer, the option consideration shall be nonrefundable except as otherwise specifically provided herein. If Buyer exercises the Option by providing Option Notice with respect to some, but not all, of the Property, Buyer will retain the Option to purchase all, or any part, of the remaining property by providing subsequent Option Notice within the Option Period.

Section 1.4 Purchase Price.

The Purchase Price of the Exercised Property shall be ~~Six Thousand~~ _____ (\$~~6,000.00~~) Dollars per surveyed acre or part of an acre, subject to adjustment as herein set forth. The Purchase Price shall be paid to Seller in immediately available funds at Closing.

(b) If Buyer does not exercise the Option within the Option Period, and Buyer elects to extend the Option Period as provided for in Section 1.1.c herein, Buyer shall pay Seller the fair market value of the Option Property, based on the value of the Property at time of acquisition. If the parties are unable to agree on fair market value, Seller reserves all of its rights under Chapter 21 of the Texas Property Code or its amendments.

ARTICLE II

TITLE AND CLOSING

Section 2.1 Survey. Buyer shall, at Buyer's sole cost and expense, cause a survey (the "Survey") to be prepared and copies simultaneously delivered to the Seller. The metes and bounds description approved by Seller and Buyer and contained in the Survey, shall be used to describe the land in the Deed. The Survey shall be used as the basis for determining the final description and final purchase price.

Section 2.2 Current Taxes and Assessments. General taxes, water and sewer charges, and all other assessments, levies, fees or charges shall be prorated as of the date of Closing. If the current

year's tax is not available, then taxes shall be estimated based upon the most current assessment available. In the event the actual amount of taxes for the year of Closing is not known as of the Closing date, the parties agree to prorate real estate taxes at the time of closing(s) and to adjust at the time the actual tax bill for the year is rendered. This agreement to re-prorate shall survive the closing. If the Exercised Property is assessed as part of a larger tract of land, taxes for the Exercised Property shall be calculated and prorated based upon the total tax bill for such larger tract multiplied by a fraction, the numerator of which shall be acreage of the Exercised Property and the denominator of which shall be the total acreage of the larger tract.

Section 2.3 Costs of Closing. Cost of Closing shall be determined and allocated within 45 days prior to Closing. Except as set forth in Sections 2.1 and 2.2 above, Costs of Closing shall be allocated between Buyer and Seller in the manner customary in ~~Collin~~Hays County for like transactions.

Section 2.3 Closing. Closing shall occur within ninety (90) days of Buyer giving the Option Notice.

ARTICLE III

BUYER'S EXAMINATION

Section 3.1 Entry onto the Property by Buyer. Seller agrees to permit Buyer or its agents, representatives, employees, consultants or contractors to enter onto the Property at any time during the pendency of this Agreement for the purpose of making studies, investigations, engineering, soil/environmental tests or surveys. All such studies, investigations, tests or surveys are to be made at Buyer's expense. Buyer shall provide Seller with evidence of such insurance coverage satisfactory to Seller prior to such entry and upon request by Seller. Buyer shall repair any damage to the Property and, to the extent that the coverage of the previously described insurance policy or policies is exhausted, shall indemnify, defend and hold Seller harmless from and against any costs, damages, liabilities, losses, expenses, liens, or claims (including, without limitation, court costs and reasonable attorney's fees and expenses) arising directly out of or directly relating to any entry on or examination of the Property by Buyer, its agents, employees or contractors in the course of performing the inspections, testing or investigations provided for in this Agreement, which obligations on the part of Buyer shall survive the Closing and any termination of this Agreement.

ARTICLE IV

SELLER'S REPRESENTATIONS

Section 4.1 Representations as to General Matters. Seller represents to Buyer as follows with respect to general matters:

(a) Seller has the requisite power and authority to execute and deliver this Agreement, to carry out Seller's obligations hereunder and to sell and convey the Property to Buyer as provided in this Agreement.

(b) There are no contracts, leases, licenses, uses or occupancy agreements relating to the Property that cannot be canceled on not more than thirty (30) days' prior written notice.

(c) Seller agrees not to develop or otherwise improve the Property, with the exception of routine maintenance and repairs to the existing improvements thereon, for the term of the Option Agreement, or any extensions, if granted.

(d) Seller agrees not to develop or otherwise improve any property or soil content, adjacent to the Property in a manner that impacts the grade, drainage, or soil content of the Property.

Section 4.2 Continuing Nature of Representations. In the event that Seller any time prior to Closing discovers or receives notice of any circumstance which is inconsistent with any of the representations made in Section 4.2 hereof, Seller shall promptly give Buyer written notice of such new information or new circumstance. The representations and warranties set forth herein shall be continuing and shall be true and correct on and as of the Closing with the same force and effect as if made at that time, except to the extent that Seller gives Buyer written notice of any change therein at or prior to Closing.

ARTICLE V

BUYER'S REPRESENTATIONS

Section 5.1 Buyer's Representations. Buyer represents that all requisite action necessary to authorize Buyer to carry out Buyer's obligations hereunder have been taken, and that

(a) Buyer and any assignee of Buyer is a duly organized and valid existing corporation, limited liability company, partnership, trust or other entity, and all requisite action necessary to authorize Buyer or its authorized assignee to carry out Buyer's obligations hereunder have been taken.

(b) Buyer or its authorized assignee have been represented in the negotiation of the purchase and sale of said Property by a representative of its own choosing.

Section 5.2 Continuing Nature of Representations. The representations and warranties set forth herein shall be continuing and shall be true and correct on and as of the Closing with the same force and effect as if made at that time, except to the extent that Buyer gives Seller written notice of any change therein at or prior to Closing.

ARTICLE VI

DEFAULT AND REMEDIES

Section 6.1 Buyer's Default. If Buyer fails to exercise the Option during the Option Period, Seller not being in default hereunder, this Agreement shall thereupon be terminated and the parties shall be released from any further obligations hereunder except indemnity obligations which survive such termination. If Buyer exercises the Option but Buyer thereafter fails to purchase the Property as herein provided, Buyer shall be in default and Seller's sole and exclusive remedy shall be to

terminate this Agreement and neither party shall have any further rights or obligations hereunder except as expressly provided herein for matters surviving such termination.

Section 6.2 Seller's Default. Upon any default by Seller of its obligations under this Agreement, Buyer may elect, as Buyer's sole and exclusive remedy, by written notice to Seller (a) to seek specific performance of this Agreement or (b) to terminate this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Notices. When notices are provided for herein, the same shall be in writing and served on the parties at the addresses listed in this paragraph. Any notice shall be either (i) sent by registered or certified mail/return receipt requested, in which case it shall be deemed delivered on the earlier of actual receipt or the third (3rd) business days after being deposited in a receptacle regularly serviced by the US Postal Service; or (ii) sent by nationally recognized overnight courier, in which case it shall be deemed delivered one business day after deposit with such courier; or (iii) sent by telecommunication ("Fax") during normal business hours in which case it shall be deemed delivered on the day sent. The addresses and facsimile transmission numbers listed in this paragraph may be changed by written notice to the other parties, provided, however, that no notice of change of address or facsimile transmission number shall be effective until the date of delivery of such notice. Copies of notices are for informational purposes only and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

SELLER: JOHN R. ALBERS
3825 Gillon Avenue
Dallas, Texas 75205
Phone: () -
Fax: () -
Phone: (214) 739-5599
Fax: (214) 739-5588

BUYER: COLLINHAYS COUNTY, TEXAS

Phone: () -
Fax: () -

with copies to: _____

Phone: () -
Fax: () -

Or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery.

Section 7.2 Applicable Law. This Agreement shall be controlled, construed, and enforced according to the laws of the State of Texas.

Section 7.3 Entire Agreement. This Agreement, the Participation Agreement, and the Lease, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may not be modified except in writing signed by both parties hereto.

Section 7.4 Persons Bound. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives.

Section 7.5 Seller's Consent. Except as expressly set forth herein to the contrary, whenever any document or action contemplated herein requires the consent or approval of Seller, such consent or approval shall not be unreasonably withheld, delayed or denied. If Seller does not give written notice of denial of consent or of disapproval within thirty (30) days after the request for consent or approval is made, Seller will be deemed to have granted consent or approval.

Section 7.6 Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

Section 7.7 Attorneys' Fees. If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

Section 7.8 Seller's Assignment. Seller's obligations hereunder shall be assignable without the prior written consent of Buyer. Seller, however, acknowledges that this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns if and when the Seller sells the Property encumbered by this Agreement. Future owners of the Property shall acknowledge these obligations which shall be recorded in the Official Records of Collin Hays County.

Section 7.9 Force Majeure. Whenever a period of time is herein described for the taking or performance of an action by either party (other than the payment of money), such party shall not be liable or responsible for, and there shall be excluded from the computation of such period of time,

and periods of time for performance shall be equitably extended by the time of any delays due to strikes; riots; acts of God; severe weather; shortages of labor or materials; war; acts of terrorism; governmental laws, regulations, restrictions or moratoriums; walk-outs; inability to obtain suitable equipment or components; accidents; fire; water damage; flood; earthquake or other natural catastrophes or other similar events beyond the control of the parties or which could not have reasonably been foreseen and provided against by the parties, and which such party is unable to prevent or overcome. Except for the extension of time due to the occurrence of any of the foregoing Force Majeure events, time shall be of the essence with respect to performance of all covenants and obligations of each party under this Agreement.

Section 7.10 Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that any version hereof may have been prepared by counsel for one of the parties, it being recognized that both Seller and Buyer have contributed substantially and materially to the preparation of this Agreement.

Section 7.11 Severability. If any clause or provision in this Agreement is held to be illegal, invalid or unenforceable, or the application thereof to any person or circumstance shall to any extent be illegal, invalid or unenforceable under present or future laws effective during the Term hereof or of any provisions hereof which survive Closing, then and in such event, it is the express intention of the parties hereto that the remainder of this Agreement, or the application of such clause or provision other than to those as to which it is held illegal, invalid or unenforceable, shall not be affected thereby, and each clause or provision of this Agreement and the application thereof shall be legal, valid and enforceable to the fullest extent permitted by law. Furthermore, in lieu of the invalid provision, there will be added automatically as a part of this Agreement, a provision as similar in terms to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

Section 7.12 Exhibits. Exhibits referred to in the Agreement and attached hereto are incorporated into and made a part of the Agreement.

Section 7.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 7.14 Amendments. This Agreement may be amended or modified only by a written instrument signed by the parties hereto.

The parties hereto have executed this Agreement as of the respective dates written below.

SELLER

BUYER:

~~COLLIN~~HAYS COUNTY, TEXAS

JOHN R. ALBERS

By: _____
Its: _____

Date: _____, 20082013

| Date: _____, 20082013

ACKNOWLEDGMENT

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This instrument was acknowledged before me on this the ____ day of the month of _____, 20082013, by John C. Albers _____, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of and behalf of said entity and in the capacity and for the purposes and consideration therein expressed.

Notary Public, State of Texas

ACKNOWLEDGMENT

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This instrument was acknowledged before me on this the ____ day of the month of _____, ~~2008~~2013, by _____ for ~~Collin~~Hays County, Texas, a political subdivision, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of and behalf of said entity and in the capacity and for the purposes and consideration therein expressed.

Notary Public, State of Texas

After recording please return to:

Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664