

RESOLUTION NO. 20060831-015

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Council authorizes the negotiation and execution of all documents necessary to release a real property interest, an access easement, to Hill Country Galleria, LP in exchange for Hill Country Galleria, LP providing an alternate access drive to the City of Austin to access Galleria Parkway located between RM 2244 and RM 620 roughly parallel to SH 71, in Travis County in accordance with the term sheet attached as Exhibit A.

ADOPTED: August 31, 2006

ATTEST:


Shirley A. Gentry
City Clerk

EXHIBIT A

TERM SHEET REGARDING ACCESS EASEMENT

This Term Sheet Regarding Access Easement (the "Term Sheet") reflects the status of negotiations by and between Hill Country Galleria, L.P. ("HCG"), the City of Austin ("City"), and the Lower Colorado River Authority ("LCRA") (HCG, the City, and LCRA are sometimes referred to herein as the "Parties").

Background

A. HCG owns approximately 152 acres of land adjacent to the intersection of RM 2244, SH 71, and RM 620 in Travis County, that HCG intends to develop in accordance with the Concept Plan and related zoning and other approvals for The Hill Country Galleria in the Village of Bee Cave (the "Project").

B. The City owns approximately 462 acres of land (commonly known as Bohls Ranch) that the City manages as habitat preserve for the benefit of the golden-cheeked warbler and black capped vireo (the "Preserve"). The Preserve comprises a portion of the Balcones Canyonlands Conservation Plan ("BCCP"), the regional habitat conservation plan covering western Travis County that calls for the creation of a preserve system to protect eight (8) endangered species as well as twenty-seven (27) other species believed to be at risk. The Preserve is adjacent to and north of the Project.

C. LCRA owns approximately 12.3 acres of land adjacent to the Project and the Preserve (the "LCRA Tract") at which LCRA intends to construct a wastewater treatment plant, holding pond, and related facilities.

D. The City and LCRA have, from time to time, obtained access to the Preserve and the LCRA tract over and across that certain access easement described on Exhibit "A" attached to the "Designation of Relocation of Easement" recorded as Document No. 2002195329 in the Official Public Records of Travis County, Texas, being the same access easement which is reserved and referred to in the instruments recorded at Volume 6469, Page 104, Volume 8064, Page 578, Volume 8983, Page 375, Volume 10559, Page 570 and Volume 12396, Page 1171 of the Real Property Records of Travis County, Texas ("Easement"), and other roads and lanes over and across the HCG Tract that have existed from time to time. In connection with development of the Project, Galleria Parkway, a public roadway, will be constructed connecting RM 2244 and RM 620. Access will be provided to the Preserve and the LCRA Tract over and across an access drive from Galleria Parkway to the LCRA Tract in substantially the same configuration as shown on Exhibit A attached hereto ("BCCP/LCRA Access Drive"), and in accordance with this Term Sheet.

Terms and Conditions

The Parties are willing to consider entering into agreements and take certain actions, based on the following terms and conditions, which are to be included within mutually acceptable agreements and documents to be negotiated and executed by HCG, LCRA, and City in accordance with, and subject to, the following terms, conditions, and provisions contained in this Term Sheet:

1. In exchange for HCG, at HCG's expense providing access to the Preserve and the LCRA Tract as set forth below, the City and LCRA shall release any and all right, title, and interest, in and to the Easement, by executing and recording a "Release of Easement" in form substantially the same as that set forth on Exhibit B. The City and LCRA shall execute and record the Release of Easement in the Official Public Records of Travis County, Texas, within thirty (30) days written notice from HCG of completion of construction of the BCCP/LCRA Access Drive.

2. HCG, at HCG's expense, shall provide the BCCP/LCRA Access Drive from Galleria Parkway to the LCRA Tract for the benefit of the City and LCRA. The BCCP/LCRA Access Drive may, at HCG's sole discretion, be constructed with pervious materials, including, without limitation, pervious pavers, gravel, and pervious concrete. Any and all, goods, materials, services, and related costs to construct, install, and maintain the BCCP/LCRA Access Drive shall be at the sole cost of HCG, its successors and assigns.

3. During construction of the Project, HCG must coordinate with Don Koehler at 263-6430 or John Chenowith 263-6434, or their successors or designees, in order to keep the City's Preserve personnel informed of locations at which City personnel and emergency service vehicles will have guaranteed access to the Preserve. The City and LCRA shall not be required to update any boundary fence between the Preserve and the Project, or the LCRA Tract and the Project. However, HCG and any tenants located at the Project reserve the right to negotiate with the City or LCRA for upgrades to any and all boundary fences between the Preserve and the Project, or the LCRA Tract and the Project. It is the Parties' understanding that such upgrades, if approved by the City or LCRA, which approval shall not be unreasonably withheld, shall be constructed solely at HCG's or any tenant's expense, or that of their successors and assigns. All "upgraded" boundary fencing, if any, must provide at least the same level (or better) of protection to the Preserve as currently exists.

4. HCG will cause the owner or operator of any and all multifamily residential facilities located within the Project to cooperate in public education and outreach to their residents regarding prohibited access to the Preserve. Such residents shall be informed of the restricted aspects of the Preserve, including, without limitation, that the Preserve constitutes protected wildlife habitat, access is prohibited, and violators will be prosecuted under any and all applicable laws or regulations. Such public education and outreach may include incorporating language in leases (if tenants) or restrictive covenants (if for sale units) that clearly informs residents about the restricted aspect of the Preserve, including, without limitation, that the Preserve constitutes protected wildlife habitat, that access is prohibited, and that violators will be prosecuted under any and all applicable laws or regulations.

Other

a. All notices, demands and requests which may be given or which are required to be given by any party to the other shall be in writing and shall be deemed effective when: (i) sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (ii) delivered in person to the address set forth below for the party to whom the notice was given; (iii) deposited into the custody of a recognized overnight delivery service such as Federal Express Corporation, Emery, or Lone Star Overnight, addressed to such party at the address specified below; or (iv) sent by facsimile, telegram or telex, provided that receipt for such facsimile, telegram or telex is verified by the sender and followed by a notice sent in accordance with one of the other provisions set forth above. For purposes of this section, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to HCG:

Hill Country Galleria, L.P.
c/o Opus West Corporation
15455 North Dallas Parkway, Suite 450
Addison, Texas 75001
Attn: Tom Kier
Fax: (972) 669-2216

with a copy to: Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Daniel T. Haug
Fax: (602) 468-7045

and: Opus West Corporation
Attn: Joel DeSpain
101 E. Old Settlers Blvd. #230
Round Rock, Texas 78664
Fax: (512) 328-9361

and: Gregory L. Mast
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016
Fax: (602) 530-8500

and: Matthew H. Baskind
100 Congress Ave., Suite 1300
Austin, Texas 78701
Fax: (512) 435-2360

and: Craig M. Douglas
211 West 6th Street, Suite 1100
Austin, Texas 78703
Fax: (512) 435-5826

If to LCRA: Janet Stephenson
LCRA Regional Manager
Mailstop WTC
P.O. Box 220
Austin, Texas 78767-0220
Fax: 512-473-3530

with a copy to: Vic Ramirez
LCRA Associate General Counsel
Mailstop H-424
P.O. Box 220
Austin, Texas 78767-0220
Fax: 512-473-4010

If to City:

City of Austin
Austin Water Utility
625 E. 10th Street
Austin, Texas 78701
Attn: William Conrad, Environmental Conservation
Division Manager
Telephone: (512) 263-6430
Fax: (512) 263-1276
Email: willy.conrad@ci.austin.tx.us

With copy to:

City of Austin
Real Estate Services Division
Department of Public Works
P.O. Box 1088
Austin, Texas 78767-8839
Attn.: Junie Marie Plummer
Phone No.: (512) 974-7085
Fax No.: (512) 974-7088
Email: junie.plummer@ci.austin.tx.us

With copy to:

City of Austin
301 W. 2nd Street, 4th Floor
Austin, Texas 78701
Attention: Alison Gallaway, Assistant City Attorney
Telephone: (512) 974-2671
Fax: (512) 974-2912
Email: alison.gallaway@ci.austin.tx.us

b. The Parties acknowledge that the Village of Bee Cave has approved the BCCP/LCRA Access Drive location and configuration, including without limitation the median break and driveway location, and the Village of Bee Cave does hereby approve the BCCP/LCRA Access Drive location and configuration as evidenced by the signature hereto of its designated representative.

c. The Parties acknowledge that the City currently obtains access to the Preserve across and over the LCRA Tract, and any and all necessary authorization, if any, for continuing such access shall occur by separate agreement or arrangement between the City and LCRA.

d. The Parties acknowledge that the City's approval and signature of the Release of Easement shall require approval by a majority of the City Council.

e. This Term Sheet is nonbinding and explicitly limited to an invitation, and not an agreement or otherwise, to enter into negotiations for separate agreements and to take separate actions upon the terms, conditions, and provisions expressed herein. The Term Sheet constitutes only an expression of interest and is not an agreement to consummate the contemplated agreements or take the actions referenced herein. Notwithstanding the foregoing, the Parties acknowledge, agree, and approve the location and configuration of the BCCP/LCRA Access Drive.

CITY

City of Austin

By: _____

Name: _____
corporation, its General Partner

Date: _____

HCG

Hill County Galleria, L.P., a Delaware limited partnership

By: OWC Hill Country, Inc., a Delaware

By: _____

Name: _____

Title: _____

Date: _____

LCRA

Lower Colorado River Authority

By: _____

Name: _____

Title: _____

Date: _____

Village of Bee Cave Approves, Agrees, and Accepts the BCCP/LCRA Access Drive Location and Configuration attached as Exhibit B to this Term Sheet (See Paragraph (b) of this Term Sheet):

Village of Bee Cave

By: _____

Name: _____

Title: _____

Date: _____

BCCP/LCRA Access Drive

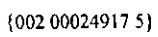


EXHIBIT B TO TERM SHEET

Form of Release of Easement

RELEASE OF EASEMENT

STATE OF TEXAS
COUNTY OF TRAVIS

§
§
§

KNOW ALL PERSONS BY THESE PRESENTS:

THIS RELEASE OF EASEMENT (this "Release") is made and executed by the City of Austin ("City"), and the Lower Colorado River Authority ("LCRA") (City and LCRA are referred to herein collectively as "Releasors"), on the date of the acknowledgment hereinbelow, to be effective when recorded in the Official Public Records of Travis County, Texas.

WITNESSETH:

A. Hill Country Galleria, L.P., and/or its successors and assigns ("HCG"), owns approximately 152 acres of land adjacent to the intersection of RM 2244, SH 71, and RM 620 in Travis County (the "HCG Tract"), on which HCG has developed and will develop a mixed use project known as the Hill Country Galleria (the "Project").

B. The City owns approximately 462 acres of land (commonly known as Bohls Ranch) that the City manages as habitat preserve for the benefit of the golden-cheeked warbler and black capped vireo (the "Preserve"). The Preserve comprises a portion of the Balcones Canyonlands Conservation Plan ("BCCP"), the regional habitat conservation plan covering western Travis County that calls for the creation of a preserve system to protect eight (8) endangered species as well as twenty-seven (27) other species believed to be at risk. The Preserve is adjacent to and north of the HCG Tract.

C. LCRA owns approximately 12.3 acres of land adjacent to the HCG Tract and the Preserve (the "LCRA Tract") at which LCRA intends to construct a wastewater treatment plant, holding pond, and related facilities.

D. Releasors have, from time to time, obtained access to the Preserve and the LCRA Tract over and across the that certain access easement described on Exhibit "A" attached to the "Designation of Relocation of Easement" recorded as Document No. 2002195329 in the Official Public Records of Travis County, Texas, being the same access easement which is reserved and referred to in the instruments recorded at Volume 6469, Page 104, Volume 8064, Page 578, Volume 8983, Page 375, Volume 10559, Page 570 and Volume 12396, Page 1171 of the Real Property Records of Travis County, Texas ("Easement"), and other roads and lanes over and across the HCG Tract that have existed from time to time. Releasors currently obtain access to the Preserve and the LCRA Tract over and across an access drive from Galleria Parkway, a public roadway, constructed in connection with the Project, to the LCRA Tract. Accordingly, the Easement is no longer required.

E. Releasors agreed to release any and all right, title, and interest in and to the Easement, and Releasors desire to make and execute this Release in order to formally, and of record, terminate, release and relinquish any and all of Releasors' right, title and interest in, to or under said Easement.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Releasors hereby acknowledge and agree as follows:

1. Termination and Release of Easement. Releasors hereby release, cancel and terminate the Easement in its entirety, and relinquish any and all rights, title and interest in and to the Easement, and any and all access roads over and across the HCG Tract that may have existed or been used by the City or LCRA from time to time.

2. Binding Effect. This Release is effective upon recordation of an original counterpart hereof in the Official Public Records of Travis, County, Texas, and, once so recorded, shall be binding upon Releasors, their legal and personal representatives, successors and assigns, and shall inure to the benefit of HCG, its successors and assigns.

3. Counterparts. This Release may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

IN WITNESS WHEREOF, Releasors have caused this Release to be executed on, and effective as of, the date(s) described in the preamble above.

RELEASORS:

CITY OF AUSTIN

By: _____
Name: _____
Title: _____

LOWER COLORADO RIVER AUTHORITY

By: _____
Name: _____
Title: _____

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2006, by _____ of the City of Austin, State of Texas, on behalf of said city and state.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2006, by _____
_____, _____ of the Lower Colorado River
Authority, on behalf of said authority.

Notary Public, State of Texas

AFTER RECORDING,
PLEASE RETURN TO:

