



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/7/2024

File ID: TMP-4757

Department: Urban Development

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an Option to Purchase Real Estate Agreement between the City of Huntsville and Barbara Swaim and Doris E. Strang.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: \$10,100,000.00

Total Cost: \$ 10,100,000.00

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address: 10201 U.S. Highway 231/431

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 24-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into an Option to Purchase Real Estate, by and between the City of Huntsville, a municipal corporation in the State of Alabama, and Barbara Swaim, a single woman, and Doris E. Strang, a married woman, which said agreement is substantially in words and figures as that certain document attached hereto and identified as "Option to Purchase Real Estate between the City of Huntsville and Barbara Swaim and Doris E. Strang," consisting of eight (8) pages including Exhibit A, and the effective date of October 24, 2024, appearing on the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor be and he is hereby authorized to exercise the Option to Purchase Real Estate, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, including the authority to assign said document and/or the authority to execute all such documents relevant or relating to effect and complete the real estate transaction contemplated therein.

ADOPTED this the 24th day of October, 2024.

President of the City Council of the City of
Huntsville, Alabama

APPROVED this the 24th day of October, 2024.

Mayor of the City of Huntsville, Alabama

OPTION TO PURCHASE REAL ESTATE

This OPTION TO PURCHASE REAL ESTATE (this "Agreement") is made and entered into as of the _____ day of October, 2024, by and between the **City of Huntsville**, an Alabama municipal corporation (hereinafter referred to as the "City" or "Purchaser"), and **Barbara Swaim**, a single woman, and **Doris E. Strang**, a married woman (hereinafter collectively referred to as "Owner" or "Seller").

WHEREAS, Owner is the owner of certain real estate located at 10201 U.S. Hwy 231/431, Huntsville, Alabama, consisting of approximately 38.62 acres, more or less, and being more particularly described on Exhibit "A" attached hereto, together with any and all adjacent lands owned by Owner, whether by color of title, descent cast or adverse possession, together with all improvements thereon and all appurtenances, easements, rights of way, water and water rights (including but not limited to wells, canals, and reservoirs), pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals of every kind, mineral rights, oil rights, and gas rights, and any fixtures or evidence related thereto, whether now or later used or useful in connection with, appurtenant to or related thereto, whether appropriated or unappropriated, tributary or non-tributary, and decreed or undecreed (hereinafter collectively referred to as the "Property"); and

WHEREAS, the City desires to obtain from Owner an exclusive option to purchase the Property.

NOW THEREFORE, in consideration of the premises, which are incorporated herein by reference, and the mutual covenants contained herein, the parties agree as follows:

1. Option. For and in consideration of Fifty Thousand Dollars (\$50,000.00), to be paid within seven (7) business days' from the full execution of this Agreement, and other good and valuable consideration in hand paid to the Owner ("Option Money"), the receipt and sufficiency of which are hereby acknowledged by the Owner, the Owner hereby grants to Purchaser an exclusive right and option (the "Option") to purchase the Property at the purchase price and on the terms and conditions hereinafter set forth. The Option Money shall be applicable to the Purchase Price, but non-refundable.

2. Purchase Price. The aggregate purchase price for the Property shall be TEN MILLION ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$10,100,000.00). The Purchase Price shall be paid to Owner in cash upon the delivery of the deed to the Property to Purchaser and satisfaction of all other closing conditions set forth in this Agreement.

3. Option Term; Extension. The term of the Option herein granted is for an initial period of one hundred fifty (150) days commencing on the date this Agreement is duly executed by all parties, and expiring at midnight on the 150th day thereafter (the "Initial Term"); provided that the Purchaser may unilaterally extend the term of the Option for a period of sixty (60) days (if any, the "Extension Term") by the payment of an additional Ten Thousand and no/100 dollars (\$10,000.00) (the "Extension Payment") from the Purchaser to the Owner, but if not extended

then the Option shall terminate at the end of the Initial Term. The Extension Payment shall not be applicable to the Purchase Price and shall be non-refundable. If the Option is not exercised or extended in writing prior to expiration, this Option shall automatically and without notice expire and any consideration paid therefore shall be retained by Owner, and neither party shall have any further liability or obligation hereunder.

4. Exercise of Option. Notice of election by Purchaser to exercise the Option shall be delivered to Owner in person or by a prepaid nationally recognized courier service, or mailed to Owner by certified United States mail, postage prepaid, addressed to Owner at the address given in this Option, and the same shall be deemed to have been received on the day it is delivered.

5. No Obligation to Purchase. Nothing in this Agreement is intended or shall operate to require Purchaser to purchase the Property.

6. Termination. At any time prior to the execution of this Agreement, should Purchaser determine that the Property is not feasible for the intended development project, then Purchaser shall promptly provide notice to owner to terminate this Agreement.

7. Deed. It is understood and agreed that the title herein required to be furnished at closing is fee simple good and marketable title of record, free and clear of all liens, encumbrances, and parties in possession as lessees, licensees, tenants at sufferance, or trespassers, except (i) ad valorem taxes for the current year not yet due and payable, and (ii) matters shown on the Title Commitment (defined herein) or Survey (defined herein), which are approved in writing by Purchaser (the "Permitted Exceptions"). The Property shall be conveyed by statutory warranty deed, free and clear of any and all liens and encumbrances, except for the Permitted Exceptions. The deed shall include both the attached legal description as well as the legal description determined by the Survey (described below).

8. Preliminary Title Commitment Survey. Purchaser, at its expense, shall obtain (i) a commitment to issue an ALTA owner's policy of title insurance (the "Title Commitment") from Closing Agent (defined below) covering the Property showing any existing encumbrances affecting the Property and in whom fee simple title is currently vested, and (ii) and an ALTA survey of the Property prepared by a registered public land surveyor licensed by the State of Alabama, containing a metes and bounds description of the Property (the "Survey").

9. Closing. The deed to the Property shall be delivered, and the sale shall be closed ("Closing") at the law offices of Lanier Ford ("Closing Agent") within forty-five (45) days after the exercise of the Option (the "Closing Date"), provided that if any encumbrances or liens which have not been approved by Purchaser remain in effect or unsatisfied, or title is otherwise not acceptable to Purchaser at that time, the sale shall be closed within thirty (30) days after title is made acceptable to Purchaser.

10. Taxes. Ad valorem taxes on the Property shall be prorated as of the date of the delivery of the deed such that Owner will be responsible for any taxes due on the Property up to the Closing Date and Purchaser will be responsible for the taxes on the Property after the Closing Date.

11. Condition of Property. Purchaser is responsible for its own inspection and examination of the Property and any improvements thereon. Notwithstanding the foregoing, Owner agrees that nothing will be done to the Property which would reduce the value of the Property, or cause Purchaser to incur additional costs of developing the Property. Should Purchaser exercise its option, Owner agrees to convey the Property to Purchaser in substantially the same condition as on the date hereof. Purchaser acknowledges and agrees that Owner is conveying Property in its "AS IS" condition.

12. Closing Costs. The cost of deed preparation by Purchaser's counsel, deed tax, recording fees, and all closing costs, except for Owner's attorney's fees, shall be paid by Purchaser at Closing.

13. Title Insurance. All title insurance premiums shall be paid by Purchaser.

14. Owner's Default: In the event Owner fails to perform any provision of this Agreement, Purchaser may reaffirm this Agreement and proceed against Owner for specific performance thereof.

15. Purchaser's Default: In the event Purchaser fails to purchase the Property after exercising the Option, Owner's remedy shall be payment by Purchaser of Ten Thousand and 00/100 Dollars (\$10,000.00) in liquidated damages in addition to the Option Money. The parties acknowledge that Owner's damages in the event Purchaser does not close are difficult to ascertain, but that \$10,000.00 is deemed to be a reasonable estimate of such damages and does not constitute a penalty.

16. Assignment. Purchaser shall have the right to assign this Option or any of its rights and responsibilities hereunder at any time without the consent of Owner; and from and after the date of such assignment, the term Purchaser, as used herein shall, mean and include such assignee. Purchaser shall notify Owner in writing of any assignment and the name of the assignee.

17. Right of Entry. Upon execution of this Agreement and throughout the Initial Term and, if applicable, Extended Term, Purchaser and its agents are hereby granted the right to enter onto, over, through, across and from the Property from time to time for the purpose of making any general inspections, explorations, tests and surveys as the Purchaser may desire, or for the purpose of engaging in any other general property evaluation and assessment activities which Purchaser deems appropriate, including, without limitation, surveys, soil borings, soil tests, subsurface drillings, subsurface condition evaluations, and environmental inspections or testing (collectively, referred to as the "Reports"). Provided, however, that Purchaser and its agents or representatives shall: a) not unreasonably disturb the Property; b) damage any portion of the Property or any personal property located on the same; or c) injure or otherwise cause bodily harm to Owner or their licensees. All such investigations, testing and evaluations shall be undertaken only after Purchaser has provided reasonable notice of such to Owner and shall be performed by Purchaser or its agents at Purchaser's sole cost and expense. In the event Purchaser does not elect to exercise the Option, Purchaser, at its cost, shall restore the Property to substantially the same condition as existed prior to such testing. Additionally, Purchaser shall be responsible for obtaining any necessary licenses, permits, or governmental approvals required by its inspections, if any, and all

costs associated therewith. In the event that this Agreement is terminated, copies of all Reports, as referred to herein, shall be transferred to Owner.

18. Authority. Owner represents and warrants, to and for the benefit of Purchaser, that Owner has the authority to convey the Property in accordance with the terms of this Agreement and the individual(s) signing this Agreement and all documents executed or to be executed by Owner are and shall be duly authorized to sign on behalf of Owner.

19. Property Condition. During the term of this Option, Owner shall not (a) sell, lease, transfer or encumber in any manner any portion of the Property, (b) construct, remove or substantially modify any improvements existing on the Property; or (c) cut or remove or sell the right to cut, remove or divert any timber, mineral deposits, soil, dirt, water or any other natural resources from or on the Property. During the term of this Option, Owner shall maintain the Property and all improvements on the Property in substantially the same condition that existed on the date of this Agreement.

20. Farm Lease. Parties acknowledged that any existing farm lease between Owner and a farm tenant shall be terminated by Owner on or before the earlier of December 31, 2024, or the Closing Date, provided that the City has exercised this Option.

21. Broker's Fees. Each party represents that there are no brokers' fees or real estate commissions due on account of this Agreement or the transactions contemplated hereby. Each party agrees to indemnify, defend and hold the other harmless from any claims of real estate agents or brokers claiming through the party.

22. Attorney's Fees. In the event either party initiates any lawsuit, litigation, or legal action regarding the terms of this Agreement or the Property, the prevailing party shall be entitled to collect reasonable attorney's fees and court costs.

23. Governing Law. The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama, without regard to Alabama's conflict of laws provision.

24. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the transactions provided for herein, and the parties hereto agree that no other representations have been relied on by either party.

25. Successors and Assigns. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Owner, and inure to benefit of the successors and assigns of Purchaser.

26. Notice. All notices to be delivered hereunder shall be in writing and shall be delivered in person or by a prepaid nationally recognized courier service, or mailed by certified United States mail, postage paid, return receipt requested, addressed to the party to which notice is to be given as set forth below and the same shall be deemed to have been received on the day it is delivered, postmarked or deposited with courier service, as the case may be. Purchaser or Owner

may change its notice address and related information by providing to the other ten (10) days' prior written notice of such new address and information.

To Owner: Doris Strang
c/o Barbara Swaim
10201 U.S. Hwy 231-431
Huntsville, Alabama 35810
Phone 205-527-9703
stranggang@icloud.com

To City: City of Huntsville
Attn: Shane Davis
Director of Urban Development
305 Fountain Circle
Huntsville, Alabama 35801
Phone: 256-427-5100
Email: shane.davis@huntsvilleal.gov

With a copy to: Lanier Ford
Attn: Samuel H. Givhan or Katie Beasley
2101 West Clinton Avenue, Ste. 102
Huntsville, Alabama 35805
shg@lanierford.com
kab@lanierford.com

27. Survival. Any terms and covenants contained in this Agreement which require the performance of either party after the Closing shall survive the closing and delivery of the deed.

28. Email or Facsimile Signatures. The parties agree that this document may be executed and the signatures transmitted to the other parties by facsimile, email or similar electronic transmission. Upon transmission and receipt by another party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the parties agree that they will transmit original signature pages to the other parties and Closing Agent promptly after execution.

29. Execution by Counterpart Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

30. Recording. Purchaser may, at Purchaser's option, record this Agreement or a memorandum thereof in the Probate Office of Madison County, Alabama in order to protect Purchaser's rights herein. Upon Purchaser's request, Owner agrees to execute a recordable memorandum of this Agreement within five (5) days of such request.

31. Personal Property. Any personal property left on the Property after Closing shall be considered abandoned by Owner and Purchaser may, at Purchaser's option, remove or dispose of such personal property without being liable to Owner therefor.

32. Counsel Acknowledgment and Conflict Waiver. The parties acknowledge that Purchaser's counsel, SAMUEL H. GIVHAN ("Purchaser's Counsel"), with the law firm of Lanier, Ford, Shaver & Payne, P.C. (the "Lanier Firm") prepared this Agreement on behalf of and in the course of his representation of Purchaser. The parties further acknowledge that D. Ashley Jones ("Tax Counsel"), who also is with the Lanier Firm, is providing tax advice to Owner regarding the impact of this transaction. For the purposes of this transaction, Purchaser's Counsel represents the Purchaser in the drafting of this contract, insuring title and closing the transaction and Tax Counsel Represents the Owner regarding the tax aspects of the transaction and any tax deferred exchanges. All conflicts of interest due to the above referenced representation of Purchaser and Owner are hereby waived. Neither the City nor Purchaser's Counsel have provided any tax advice to Owner regarding this transaction.

33. Homestead. The Property only constitutes the homestead of Barbara Swaim.


[Signatures and acknowledgments appearing on the following page.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

OWNER:



Witness


Name: Barbara Swaim



Witness


Name: Doris E. Strang

PURCHASER:

PURCHASER:

THE CITY OF HUNTSVILLE

By: _____
Name: _____
Title: _____

Attest:

By: _____
Its: _____

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Exhibit "A"

All that part of the Northeast Quarter of Section 36, Township 2 South, Range 1 West, Madison County, Alabama; particularly described as beginning at a point on the West margin of U.S. Highway 231-431; said point is further described as South 67 degrees 49 minutes West 43.16 feet and South 0 degrees 08 minutes East 789.14 feet from the Northeast corner of said Section 36; thence from the Place of True Beginning South 0 degrees 08 minutes East along the West margin of said U.S. Highway No. 231-431 a distance of 875.13 feet; thence North 89 degrees 40 minutes West 2203.52 feet; thence North 0 degrees 11 minutes East 490.39 feet; thence North 89 degrees 48 minutes East 200.13 feet; thence North 3 degrees 49 minutes West 364.68 feet; thence North 89 degrees 48 minutes East 2024.0 feet to the True Place of Beginning and containing 42.13 acres, more or less.

LESS AND EXCEPT the following fee simple property acquired by the City of Huntsville:

A part of Section 36, Township 2 South, Range 1 West of the Huntsville Meridian, identified as Tract No. 54 on Project No. ST-045-000-015 in Madison County, Alabama, and being more fully described as follows:

Beginning at a point on the western property line of the subject property having an Alabama State Plane (East Zone) coordinate value of N 1575138.96 and E 432561.22, 200.00 feet right of HNB Mainline at Station 352+18.39;

Thence along the western property line N 2°44'01" W a distance of 9.14 feet to a point on the northern property line 191.12 feet right of HNB Mainline at Station 352+16.38;

Thence along the northern property line S 89°07'01" E a distance of 2001.27 feet to a point on the present right-of-way line 91.91 feet left of Memorial Pkwy at Station 48+48.67;

Thence along the present right-of-way line S 0°51'06" W a distance of 870.14 feet to a point on the southern property line 91.46 feet left of Memorial Pkwy at Station 39+78.31;

Thence along the southern property line N 88°44'26" W a distance of 68.54 feet to a point on the acquired right-of-way line 160.00 feet left of Memorial Pkwy at Station 39+78.70;

Thence along the acquired right-of-way line N 0°55'57" E a distance of 543.98 feet to a point on the acquired right-of-way line 160.00 feet left of Memorial Pkwy at Station 45+23.07;

Thence along the acquired right-of-way line N 0°47'46" E a distance of 176.93 feet to a point on the acquired right-of-way line 160.00 feet left of Memorial Pkwy at Station 47+00.00;

Thence along the acquired right-of-way line N 33°24'15" W a distance of 120.91 feet to a point on the acquired right-of-way line 200.00 feet right of HNB Mainline at Station 370+50.00;

Thence along the acquired right-of-way line N 89°12'13" W a distance of 1387.07 feet to a point on the acquired right-of-way line 200.00 feet right of HNB Mainline at Station 356+62.93;

Thence along the acquired right-of-way line, along an arc 480.11 feet to the right, having a radius of 2700.00 feet, the chord of which is N 84°06'34" W for a distance of 479.48 feet and the POINT OF BEGINNING.

The above described parcel contains ± 3.51 acres (152942.91 sq. ft.)

Karen Weaver

Original
Thank you!
-Karen

From: Karen Weaver
Sent: Monday, October 21, 2024 3:56 PM
To: Jane Lassiter; Chargualaf, Anita
Cc: Battle, Tommy; Trey Riley; Jim McGuffey; Katie A. Beasley; Samuel H. Givhan; Shane Davis
Subject: RE: Swaim Property on Northern Bypass
Attachments: Swaim and Strang Resolution for Option.doc; Swaim and Strang Resolution and Option signed by owners.pdf

Jane and Anita:

Attached is a signed copy of the agreement and the Resolution in Word for your convenience. With such short notice, which one of you would like to receive the original?

Karen Weaver
LANIER FORD
256-535-1100 (Office)
256-533-9322 (Facsimile)

From: Samuel H. Givhan <SHG@lanierford.com>
Sent: Monday, October 21, 2024 3:10 PM
To: Shane Davis (shane.davis@huntsvilleal.gov) <shane.davis@huntsvilleal.gov>
Cc: Battle, Tommy <tommy.battle@huntsvilleal.gov>; Trey Riley <marion.riley@huntsvilleal.gov>; Jim McGuffey <jim.mcguffey@huntsvilleal.gov>; Katie A. Beasley <KAB@lanierford.com>; Karen Weaver <KWeaver@LanierFord.com>; Jane Lassiter <jane.lassiter@huntsvilleal.gov>
Subject: Swaim Property on Northern Bypass

Just spent over an hour and a half with them. I have a signed option agreement in hand. Please put on the agenda for this Thursday.

Electronic copy attached in word. I have hard copy with signatures. Karen will get you resolution to accompany. Please call if questions.

Who should we deliver original documents to?

Thanks.

Sam H. Givhan
LANIER FORD
Attorneys at Law
2101 West Clinton Ave., Suite 102 (35805)
Post Office Box 2087
Huntsville, AL 35804-2087
256-535-1100 (Office)
256-533-9322 (Facsimile)
Email: SHG@LanierFord.com