# GENERAL MEETING OF THE BOARD OF DIRECTORS OF THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

#### **RESOLUTION NO. 10-29**

Resolution Authorizing A Contract to Acquire Certain Property in Travis County for the US 290 East Toll Project (Parcel 24)

WHEREAS, pursuant to and under the authority of Subchapter E, Chapter 370, Texas Transportation Code and other applicable law, the Central Texas Regional Mobility Authority ("CTRMA") has found and determined that to promote the public safety, to facilitate the safety and movement of traffic, and to preserve the financial investment of the public in its roadways and the roadways of the State of Texas, public convenience and necessity requires acquisition of fee simple title to that certain 0.540 acres described by metes and bounds in the Real Estate Contract attached as Exhibit "A" to this Resolution (the "Subject Property"), owned by SCOTT MORSE and FREDERICK C. MORSE, III, as Independent Co-Executors of the Estate of Frederic Clark Morse, Sr., and JP MORGAN CHASE BANK as Trustee of the Frederic Clarke Morse Jr. Nonexempt Family Trust (the "Owners"), for the construction, reconstruction, maintaining, widening, straightening, lengthening, and operating of the US 290 East Toll Project (the "Project"), as a part of the improvements to the Project; and

WHEREAS, an independent, professional appraisal report of the Subject Property has been submitted to the CTRMA, and an amount has been established to be just compensation for the property rights to be acquired; and

WHEREAS, the Executive Director of the CTRMA, through agents employed or contracted with the CTRMA, has transmitted an official written offer to the Owner, based on the amount determined to be just compensation, and has entered into good faith negotiations with the Owner of the Subject Property to acquire the Subject Property; and

WHEREAS, the Executive Director and the Owner have agreed on the amount determined to be just compensation and damages, if any, due to said Owner for the Subject Property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the CTRMA that the Executive Director is specifically authorized and directed to execute the real estate contract attached as Exhibit "A" together with all associated documents necessary to acquire the fee simple interest in the Subject Property, for a total contract acquisition price of \$72,517.20.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 31<sup>st</sup> day of March 2010.

Submitted and reviewed by:

Andrew Martin

General Counsel for the Central Texas Regional Mobility Authority Approved:

Ray A. Wilkerson

Chairman, Board of Directors Resolution Number <u>10-29</u>

Date Passed <u>03/31/10</u>

### **Exhibit A: Real Estate Contract for Parcel 24**

#### REAL ESTATE CONTRACT Highway 290E Right of Way

State of Texas County of Travis

THIS REAL ESTATE CONTRACT ("Contract") is made by FREDERIC C. MORSE, III and SCOTT N. MORSE, as Independent Co-Executors of the Estate of Frederic Clarke Morse, Sr. and JP MORGAN CHASE BANK as Trustee of the Frederic Clarke Morse Jr. Nonexempt Family Trust (referred to in this Contract as "Seller") and the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (referred to in this Contract as "Purchaser"), upon the terms and conditions set forth in this Contract.

#### ARTICLE I PURCHASE AND SALE

By this Contract, Seller sells and agrees to convey, and Purchaser purchases and agrees to pay for, the tract(s) of land described as follows:

All of that certain 0.540 acre tract of land, more or less, out of the H.T. Davis Survey No. 30, Abstract No. 214, Travis County, Texas; being more fully described by metes and bounds in Exhibit "A", attached hereto and incorporated herein (Parcel 24);

together with 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 (all of such real property, rights, and appurtenances being referred to in this Contract as the "Property"), and any improvements and fixtures situated on and attached to the Property described in Exhibit "A", for the consideration and upon and subject to the terms, provisions, and conditions set forth below.

#### ARTICLE II PURCHASE PRICE

#### Purchase Price and Additional Compensation

- 2.01. The purchase price for the Property to be acquired shall be the sum of SEVENTY THOUSAND FIVE HUNDRED SIXTY SEVEN AND 20/100 DOLLARS (\$70,567.20).
- 2.01.1. As Additional compensation Purchaser shall pay the amount of ONE THOUSAND NINE HUNDRED FIFTY AND 00/100 DOLLARS (\$1,950.00) for the construction of fencing/gate along the new Property boundary.

#### Payment of Purchase Price

2.02. The Purchase Price and Additional Compensation shall be payable in cash at the closing.

### ARTICLE III PURCHASER'S OBLIGATIONS

#### Conditions to Purchaser's Obligations

3.01. The obligations of Purchaser hereunder to consummate the transactions contemplated hereby are 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.)

#### Miscellaneous Conditions

3.02. Seller shall have performed, observed, and complied with all of the covenants, agreements, and conditions required by this Contract to be performed, observed, and complied with by Seller prior to or as of the closing.

## ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as follows, which representations and warranties shall be deemed made by Seller to Purchaser also as of the closing date, to the best of Seller's knowledge:

- (1) There are no parties in possession of any portion of the Property as lessees, or tenants at sufferance;
- (2) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, if any, or any part thereof;

The Property herein is being conveyed to Purchaser under threat of condemnation.

#### ARTICLE V CLOSING

#### Closing Date

5.01. The closing shall be held at the office of Texas American Title Company on or before April 30, 2010, or at such time, date, and place as Seller and Purchaser may agree upon, or within 10 days after the completion of any title curative matters if necessary for items as shown on the Title Commitment or in the contract (which date is herein referred to as the "closing date").

#### Seller's Obligations at Closing

5.02. At the closing Seller shall:

- (1) Deliver to Purchaser a duly executed and acknowledged Special Warranty Deed conveying good and indefeasible title in fee simple to all of the Property described in Exhibit "A", free and clear of any and all liens and restrictions, except for the following:
  - (a) General real estate taxes for the year of closing and subsequent years not yet due and payable and any such taxes that may result from a change in use or ownership;
  - (b) Any exceptions approved by Purchaser pursuant to Article III hereof; and
  - (c) Any exceptions approved by Purchaser in writing: and
  - (d) All liens and restrictions reflected on Exhibit "B" to this Contract.
- (2) Deliver to Purchaser a Texas Owner's Title Policy at Purchaser's sole expense, issued by Title Company, in Purchaser's favor in the full amount of the purchase price, insuring Purchaser's title to the Property subject only to those title exceptions listed on Exhibit "B", such other exceptions as may be approved in writing by Purchaser, and the standard printed exceptions contained in the usual form of Texas Owner's Title Policy, provided, however:
  - (a) The boundary and survey exceptions shall be deleted with Purchaser paying the additional premium, if any, for such deletion;
  - (b) The exception as to restrictive covenants shall be endorsed "None of Record;" and
  - (c) The exception as to the lien for taxes shall be limited to the year of closing and shall be endorsed "Not Yet Due and Payable."
  - (d) Deliver to Purchaser possession of the Property if not previously done.

#### Purchaser's Obligations at (and After) Closing

#### 5.03. At the Closing, Purchaser shall:

(a) Pay the cash portion of the purchase price.

#### Prorations and Roll Back Taxes

5.04. General real estate taxes for the then current year relating to the Property shall be prorated as of the closing date and shall be adjusted in cash at the closing. 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 immediately preceding year applied to the latest assessed valuation. Agricultural roll-back taxes due to a change of use or ownership of the Property, if any, shall be paid by Purchaser.

#### **Closing Costs**

- 5.05. All costs and expenses of closing in consummating the sale and purchase of the Property shall be borne and paid as follows:
  - (1) Owner's Title Policy and survey to be paid by Purchaser.
  - (2) Deed, tax certificates, and title curative matters, if any, paid by Purchaser.
  - (3) All other closing costs shall be paid by Purchaser.
  - (4) Attorney's fees paid by each respectively.

#### Purchaser' Obligations After Closing

- 5.06. After Closing and contemporaneous with Purchaser's construction of the Eastbound frontage road improvements to Highway 290 upon the Property, Purchaser agrees to do the following:
  - (1) Grade, or cause to be graded, an entrance to Seller's remainder tract at a six percent slope and of a width sufficient to allow the subsequent construction and paving of a 30 foot wide driveway in the location reflected on Exhibit "C" and reseed, or cause to be reseeded, this graded area with grass. Upon request, Seller agrees to provide a temporary construction easement to Purchaser if necessary to carry out the obligations contained herein;

The obligation to grade an entrance set forth herein shall survive Closing of this Contract.

#### ARTICLE VI ESCROW DEPOSIT

For the purpose of securing the performance of Purchaser under the terms and provisions of this Contract, Purchaser has delivered to Title Company the sum of Five Hundred Dollars (\$500.00), the Escrow Deposit, which shall be paid by the title company to Seller in the event Purchaser breaches this Contract as provided in Article IX hereof. At the closing, the Escrow Deposit shall be paid over to Seller and applied to the cash portion of the purchase price, provided, however, that in the event the Purchaser shall have given written notice to the title company that one or more of the conditions to its obligations set forth in Article III have not been met, or, in the opinion of Purchaser, cannot be satisfied, in the manner and as provided for in Article III, then the Escrow Deposit shall be forthwith returned by the title company to Purchaser and the Contract will thereby be terminated.

#### ARTICLE VII BREACH BY SELLER

In the event Seller shall fail to fully and timely perform any of its obligations hereunder or shall fail to consummate the sale of the Property for any reason, except Purchaser's default,

Purchaser may: (1) enforce specific performance of this Contract; or (2) request that the Escrow Deposit shall be forthwith returned by the title company to Purchaser.

#### ARTICLE VIII BREACH BY PURCHASER

In the event Purchaser should fail to consummate the purchase of the Property, the conditions to Purchaser's obligations set forth in Article III having been satisfied and Purchaser being in default and Seller not being in default hereunder, Seller shall have the right to receive the Escrow Deposit from the title company, the sum being agreed on as liquidated damages for the failure of Purchaser to perform the duties, liabilities, and obligations imposed upon it by the terms and provisions of this Contract, and Seller agrees to accept and take this cash payment as its total damages and relief and as Seller's sole remedy hereunder in such event.

## ARTICLE IX MISCELLANEOUS

#### Notice

9.01. 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 Seller or Purchaser, as the case may be, at the address set forth opposite the signature of the party.

#### Texas Law to Apply

9.02. This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Travis County, Texas.

#### Parties Bound

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

#### Legal Construction

9.04. 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, this invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

#### Prior Agreements Superseded

9.05. This Contract constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

#### Time of Essence

9.06. Time is of the essence in this Contract.

#### Gender

9.07. 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.

#### Memorandum of Contract

9.08. Upon request of either party, the parties shall promptly execute a memorandum of this Contract suitable for filing of record.

#### Compliance

9.09. In accordance with the requirements of Section 20 of the Texas Real Estate License Act, Purchaser is hereby advised that it should be furnished with or obtain a policy of title insurance or Purchaser should have the abstract covering the Property examined by an attorney of Purchaser's own selection.

#### Effective Date

9.10. This Contract shall be effective as of the date it is approved by the Central Texas Regional Mobility Authority, which date is indicated beneath the Executive Director's signature below.

#### Counterparts

9.11. This Contract may be executed in any number of counterparts, which may together constitute the Contract. Signatures transmitted by facsimile may be considered effective as originals for purposes of this Contract.

#### SELLER:

	Address:	
Scott Morse, Independent Co-Executor of		
the Estate of Frederic Clarke Morse Sr.		
Date:	W	

	Address:	
Frederick C. Morse, III, Independe Co-Executor of the Estate of Frede Clarke Morse Sr.  Date:	ent	
JP MORGAN CHASE BANK, as of the Frederic Clarke Morse Jr. No Family Trust		
By: Its: Date:	Address:	
PURCHASER:		
CENTRAL TEXAS REGIONAL I	MOBILITY AUTHORITY	
By:  Mike Heiligenstein, Execut Date:		301 Congress Ave. Suite 650 Austin, Texas 78701

EXHIBIT

A

Page 1 of 4 Parcel 24 March 20, 2007

County: Travis
Parcel No.: 24

Highway: U.S. Highway 290

Project Limits: From: E of US 183

To: E of SH 130

Right of Way CSJ: 0114-02-085

#### PROPERTY DESCRIPTION FOR PARCEL 24

DESCRIPTION OF 0.540 OF ONE ACRE (23,506 SQUARE FEET) OF LAND OUT OF THE H.T. DAVIS SURVEY NO. 30, ABSTRACT NO. 214, IN AUSTIN, TRAVIS COUNTY, TEXAS, SAME BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED AS 64.97 ACRES IN A DEED FOR AN UNDIVIDED ONE-HALF INTEREST TO TEXAS COMMERCE BANK-AUSTIN, INDEPENDENT EXECUTOR OF THE ESTATE OF ESTELLE MORSE, OF RECORD IN VOLUME 11109, PAGE 573, REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS; SAID 0.540 OF ONE ACRE OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod set with a TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) aluminum cap, in the proposed south right-of-way (ROW) line of U.S. Highway 290, 215.00 feet right of Engineer's Baseline Station 315+23.54, at the southeast corner of the herein described tract, same being in the northeast line of said Texas Commerce Bank tract, and the southwest line of that certain tract of land described as 10.076 acres in a deed to Brookwood Oakes Limited, of record in Volume 11319, Page 413, Real Property Records, Travis County, Texas, from which point a 1/2" iron rod found in the northeast line of said Texas Commerce Bank tract and the southwest line of said Brookwood Oakes Limited tract bears S64°24'42"E 28.22 feet;

1) THENCE, with the south line of this tract and the proposed south ROW line of U.S. Highway 290, crossing said Texas Commerce Bank tract, \$84°02'32"W, at 160.57 feet passing a 1/2" iron rod set with a TxDOT aluminum cap, 215.00 feet right of Engineer's Baseline Station 313+62.97, in all a total distance of 260.57 feet to a calculated point, 215.00 feet right of Engineer's Baseline Station 312+62.97, in the centerline of Walnut Creek, at the southwest corner of this tract, same being in the west line of said Texas Commerce Bank tract, and in the east line of that certain tract of land described as 47.533 acres in a deed to Herby's Joint Venture (11.8% undivided interest), of record in Volume 13361, Page 398, Real Property Records,

#### EXHIBIT

Travis County, Texas, and in a deed to Herby's Joint Venture (5.6% undivided interest), of record in Volume 13361, Page 393, Real Property Records, Travis County, Texas, and in a deed to the City of Austin (82.6% undivided interest), of record in Volume 12033, Page 1550, Real Property Records, Travis County, Texas;

THENCE, with the west line of this tract and of said Texas Commerce Bank tract, and the east line of said City of Austin-Herby tract, along the centerline of said Walnut Creek, the following three (3) courses numbered 2, 3, and 4;

- 2) N23°55'52"E 75.00 feet to a calculated point;
- 3) N06°58'41"E 67.45 feet to an calculated point; and
- 4) N05°42'02"W 45.69 feet to a calculated point at the north corner of this tract and of said Texas Commerce Bank tract, same being the northeast corner of said City of Austin-Herby tract, the northwest corner of that certain tract of land described as 0.363 of one acre in a deed to Scott Morse and Frederick C. Morse III, of record in Volume 9328, Page 297, Real Property Records, Travis County, Texas, same being the southeast corner of that certain tract of land described as 3.511 acres (Part II) in a deed to the State of Texas, of record in Volume 3100, Page 868, Deed Records, Travis County, Texas, and the southwest corner of that certain tract of land described as 1.005 acres in a deed to the State of Texas, of record in Volume 3152, Page 763, Deed Records, Travis County, Texas, and being in the existing south ROW line of U.S. Highway 290, from which point a TxDOT Type I concrete monument found in the existing south ROW line of U.S. Highway 290 bears N84°02'10"E 111.89 feet;
- 5) THENCE, with the northeast line of this tract and of said Texas Commerce Bank tract, and the southwest line of said Morse tract, S61°38'02"E 223.02 feet to a 1/2" iron rod found at an east corner of this tract and the south corner of said Morse tract, same being an exterior ell corner in the northeast line of said Texas Commerce Bank tract, same also being a point in the northwest line of said Brookwood Oakes Limited tract;

THENCE, continuing with the northeast line of this tract and of said Texas Commerce Bank tract, the following two (2) courses, numbered 6 and 7;

#### EXHIBIT

- 6) With the northwest line of said Brookwood Oakes Limited tract, S27°48'22"W 30.83 feet to a 1/2" iron rod found at an interior ell corner on the east line of this tract and of said Texas Commerce Bank tract, same being the west corner of said Brookwood Oakes Limited tract; and
- 7) With the southwest line of said Brookwood Oakes Limited tract, S64°24'42"E 47.92 feet to the POINT OF BEGINNING and containing 0.540 of one acre within these metes and bounds, more or less.

All bearings are based on the Texas State Plane Coordinate System, Central Zone, NAD83(93) HARN. All distances and coordinates were adjusted to surface using a combined scale factor of 1,00011.

ACCESS MAY BE PERMITTED TO AND FROM THE TRANSPORTATION FACILITY ACROSS THE PROPOSED RIGHT-OF-WAY LINE AS DESCRIBED HEREIN, BEING THE COMMON BOUNDARY LINE BETWEEN THE PROPOSED U.S. 290 HIGHWAY FACILITY AND THE REMAINDER OF THE ABUTTING PROPERTY.

STATE OF TEXAS

S.

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS §

That I, Chris Conrad, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 20th day of March, 2007 A.D.

SURVEYED BY:

McGRAY & McGRAY LAND SURVEYORS, INC.

3301 Hancock Drive, Suite 6 Austin, Texas 78731

(512) 451-8591

Chris Conrad, Reg. Professional Land Surveyor No. 5623

Note: There is a plat to accompany this description. US 290 P24RBV Issued 02/02/07, Rev 03/20/07



