

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

RESOLUTION NO. 11-023

**Approve an Interlocal Agreement with the Texas Department of Transportation and
the City of Leander to Implement Provisions of the 2008 Memorandum of Agreement
Concerning the J.C. Bryson Farmstead Historic Site**

WHEREAS, by Resolution No. 08-43, approved July 30, 2008, the Board of Directors authorized the Executive Director to execute a Memorandum of Agreement (the "MOA") by and between the Federal Highway Administration ("FHWA"), the Advisory Council on Historic Preservation, the Texas State Historic Preservation Officer, and other signatories including the City of Leander ("City") and the Texas Department of Transportation ("TxDOT"); and

WHEREAS, the purpose of the MOA is to establish and implement a plan to protect the J.C. Bryson Farmstead, a Recorded Texas Historic Landmark, against adverse effects that the FHWA determined would result from construction of the intersection at the 183A Turnpike and proposed Williamson County Road 274; and

WHEREAS, among other provisions, under the MOA the Authority agreed to provide \$1,000,000.00 to funding the cost of specified planning and preservation efforts to be undertaken by the City, with that funding to be held and disbursed from an escrow account subject to an escrow agreement between the City, TxDOT, and the Authority; and


WHEREAS, staff for TxDOT, the City, and the Authority have negotiated a proposed escrow agreement consistent with the MOA to implement requirements of the MOA, set forth as Attachment "A" to this Resolution, and the Executive Director recommends that the Board authorize completion and his execution of an escrow agreement on terms and conditions consistent with the requirements of the MOA.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors authorizes and directs the Executive Director to complete negotiations and execute an escrow agreement in the form of or substantially in the form of the proposed escrow agreement set forth as Attachment "A" to this Resolution, and to take all other actions necessary and desirable to implement the terms and conditions of the MOA and the executed escrow agreement.

[Signatures appear on the following page]


Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of March, 2011.

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: 11-023
Date Passed: 3/30/11

ATTACHMENT "A" TO RESOLUTION 11-

Escrow Agreement

[Following 11 Pages]

ESCROW AGREEMENT

This Escrow Agreement is entered into as of the Effective Date (as defined below) by and between the City of Leander, Texas, a home-rule municipal corporation (the “City”), the Central Texas Regional Mobility Authority (“CTRMA”), the Texas Department of Transportation (“TxDOT”), and Heritage Title Company (“Heritage Title”) as the Escrow Agent. The City, CTRMA, TxDOT and Heritage Title may be referred to collectively herein as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, this Escrow Agreement is entered into pursuant to Stipulation III.B.2. of the “Memorandum of Agreement Among Federal Highway Administration, Advisory Council on Historic Preservation, And Texas State Historic Preservation Officer Addressing the Post-Review Discovery of Adverse Effects to an Historic Site, the J.C. Bryson Farmstead, Caused by the Construction of 183A Turnpike and its Intersection with Proposed County Road 274 in Leander, Williamson County, Texas” (the “MOA”), a copy of which is attached to this Escrow Agreement as Exhibit “A;” and

WHEREAS, CTRMA, the City and TxDOT joined the MOA as invited signatories to evidence their respective acknowledgement of and agreement with the provisions of the MOA; and

WHEREAS, CTRMA agreed in the MOA to place in escrow one million dollars (\$1,000,000) to be managed by the City for the purpose of preserving the Bryson Farmstead property as described in the MOA; and

WHEREAS, the City agreed in the MOA to be responsible for disbursement of the escrowed funds; and

WHEREAS, pursuant to Stipulation II.A. and other provisions of the MOA, CTRMA will seek an amendment of the MOA time deadlines established for deposit of the Escrowed Funds and completion of the Phase 1 Preservation Plan and other work to be done by the City as described in the MOA; and

WHEREAS, at the suggestion of the City, CTRMA and the City have requested that Heritage Title act as the Escrow Agent as set forth herein, and Heritage Title has agreed to so act.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, CTRMA, TxDOT, and Heritage Title agree as follows:

1. **Incorporation of Recitals and Findings.** The aforesaid Recitals are incorporated into and made a part of this agreement as if copied herein in full. Capitalized words and phrases that are not defined in this Escrow Agreement shall have the meaning given in the MOA.

2. **Appointment of Escrow Agent.** CTRMA and the City appoint Heritage Title to act as escrow agent (“Escrow Agent”) and to act as their agent with respect to the Escrowed Items, and Escrow Agent hereby accepts such appointment. The Escrow Items shall include the Escrow Agreement and the Escrowed Funds as set forth in paragraphs 3 and 4 below.

3. **Deposit of Escrow Agreement with Escrow Agent.** Concurrently herewith, the City and CTRMA shall cause one duly-executed counterpart original of this Escrow Agreement signed by the City, CTRMA, TxDOT, and Escrow Agent to be deposited with Escrow Agent.

4. **Deposit of Escrowed Funds.** Concurrently with the deposit of a duly executed original of this Escrow Agreement being deposited with Escrow Agent, CTRMA shall deposit with Escrow Agent the sum of \$1,000,000.00 (the “Escrowed Funds”). Escrow Agent shall not be responsible for the collection of the Escrowed Funds and may fully rely on CTRMA to assure the Escrowed Funds are timely deposited.

(a) Escrow Agent shall keep all the Escrowed Funds in one or more interest-bearing accounts under the name and tax identification number of the City and insured by the FDIC, or secured by a combination of such insurance and securities qualified under Texas law to be pledged as security for municipal deposits. Escrow Agent shall not be liable in the event of loss of the Escrowed Funds due to failure of the bank or savings and loan institution.

(b) Any interest which accrues on the Escrowed Funds shall be paid to the person/entity receiving any amounts remaining in the Escrow at the close of the Escrow, in accordance with the terms of this Escrow Agreement.

4. **Escrow Term.** The Escrow shall close when all of the Escrowed Funds are disbursed in accordance with Paragraphs 5 and 8 below, as applicable.

5. **Disbursement of Escrowed Funds to City.** Escrow Agent is instructed to disburse payments from the Escrowed Funds to the City pursuant to draw requests submitted by the City in accordance with the following procedures:

(a) The City will submit monthly draw requests to the Escrow Agent stating and representing as true and correct the costs incurred by the City in performing the tasks described in Stipulation II. A. and Stipulation III.B.1 of the MOA in the intervening period since submittal of the previous draw request (the “Draw Amount”). A true and correct copy of each draw request submitted to the Escrow Agent shall be submitted contemporaneously to CTRMA and TxDOT using the same method of notice the City uses under Paragraph 12(c) to submit the draw request to the Escrow Agent.

(b) Within two (2) business days after the date Escrow Agent receives a draw request, Escrow Agent shall disburse the Draw Amount to the City.

- (c) The draw request shall be in the form attached hereto as Exhibit "B."
- (d) The Escrow Agent shall pay each completed draw request forwarded by the City to Escrow Agent. The draw request shall be paid in the dollar amount actually submitted in writing by the City, if sufficient Escrowed Funds are available.

6. **Documentation and Audit of Draw Requests.**

- (a) The City shall keep and maintain records to document and support that each individual draw request paid to the City has been used or will be used only for one or more of the authorized purposes established by Stipulation III.B.1 of the MOA, and shall provide such documentation to any signatory to the MOA upon request. This obligation shall survive termination of this Agreement.
- (b) A true and correct copy of the records and documentation that support each draw request shall be provided to CTRMA and TxDOT no later than the 10th business day of each January, April, July, and October while this Escrow Agreement is in effect.
- (c) All of the City's expenditures under this Agreement shall be subject to audit by CTRMA and/or the State Auditor's Office.

7. **Performance by City and CTRMA.**

- (a) The City will use and employ the Escrowed Funds to pay only the costs and expenses reasonably incurred for the purposes set forth in Stipulation III.B.1 of the MOA, as further detailed in Stipulation II of the MOA.
- (b) CTRMA will perform the duties and obligations of the CTRMA as provided in the MOA. CTRMA shall also seek appropriate extensions of the time requirements established by the MOA, and coordinate and reasonably cooperate with the City and TxDOT to accomplish the intent and purposes of the MOA in connection with this Escrow Agreement.
- (c) CTRMA and the City shall comply with all applicable local, state, and federal laws and regulations in connection with the deposit and use of Escrowed Funds under this Agreement.

8. **Disbursement of Remaining Escrowed Funds.** Escrow Agent shall disburse to CTRMA any funds that remain in the Escrow Account no later than ten (10) days after receipt of notice from CTRMA to Escrow Agent and each other Party that two (2) years have expired since the finalization of the Preservation Plan (as provided by the MOA), and that CTRMA is entitled by Stipulation III.B.3. of the MOA to the return of any unused Escrowed Funds and all interest earned by the Escrowed Funds.

9. **Resignation of Escrow Agent.** Escrow Agent reserves the right to resign hereunder, upon twenty (20) days prior written notice to the City, CTRMA, and TxDOT. In the event of said resignation, and prior to the effective date thereof, either (a) the City

and CTRMA, by joint written notice to Escrow Agent, shall designate a successor escrow agent to assume the responsibilities of Escrow Agent under this Escrow Agreement, and Escrow Agent shall immediately deliver all of the Escrowed Funds in Escrow Agent's possession to such successor escrow agent, or (b) if the City and CTRMA do not agree on a successor escrow agent, or if they fail to deliver to Escrow Agent such written notice, Escrow Agent shall be entitled to interplead the Escrowed Funds into a court with proper jurisdiction in Williamson County, Texas.

10. **Indemnification of Escrow Agent.** The City and CTRMA, subject to appropriations and to the extent permitted by law, agree to indemnify, protect, and save and hold Escrow Agent, its successors and assigns, harmless from all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, suits, costs, and expenses (including attorneys' fees) of whatsoever kind or nature imposed on, incurred by, or asserted against Escrow Agent which in any way relate to, or arise out of the execution and delivery of this Escrow Agreement or the services and/or actions thereunder; provided, however, that the City and CTRMA shall have no such obligation to indemnify Escrow Agent for its own willful misconduct or gross negligence.

11. **Escrow Fee.** For its ordinary services hereunder, Escrow Agent shall be entitled to a fee of \$____.00, payable from the Escrowed Funds in the amount and at the time detailed in the Escrow Agent Fee Schedule attached as Exhibit "C" to this Agreement. In the event that Escrow Agent performs any service not specifically provided hereinabove, or that there is any assignment or attachment of any interest in the subject matter of this escrow or any modification thereof, or that any controversy arises hereunder, or that Escrow Agent is made a party to, or intervenes in, any litigation pertaining to this escrow or the subject matter thereof, the City and CTRMA shall, jointly and severally, reasonably compensate Escrow Agent therefor and reimburse Escrow Agent for all costs and expenses occasioned thereby, and indemnify Escrow Agent against any loss, liability or expense incurred in any act or thing done by it hereunder, to the extent permitted by law.

12. **Miscellaneous.**

(a) Time is of the essence with respect to each and every provision of this Escrow Agreement and in the performance, occurrence, fulfillment or satisfaction of each and every term and condition of the escrow created hereby.

(b) Escrow Agent shall be entitled to assume that documents and writings that are deposited into escrow or that are received in the course of carrying out its instructions hereunder are genuine and are in fact signed by the person or persons purporting to execute them, and Escrow Agent is entitled to act upon and use such documents and writings, unless and until Escrow Agent has actual knowledge of facts or circumstances that would cause a reasonably prudent person to suspect that they are not genuine. Escrow Agent shall not be responsible or liable for the accuracy, validity or appropriateness of any document or request submitted to it, and may fully rely on such document or request in acting or proceeding in accordance with this Agreement.

- (c) All notices, demands, draw or other requests, and other communications required or permitted hereunder or which any Party may desire to give, shall be in writing and shall be deemed to have been given on the sooner to occur of (i) receipt by the Party to whom the notice is hand-delivered, with a written receipt of notice provided by the receiving Party, or (ii) two (2) business days after deposit in a regularly maintained express mail receptacle of the United States Postal Service, postage prepaid, or registered or certified mail, return receipt requested, express mail delivery, addressed to such Party at the respective addresses set forth below, or such other address as each Party may from time to time designate by written notice to the others as herein required or (iii) facsimile transmission on which standard confirmation has been received by the sending Party:

Escrow Agent: Heritage Title Company of Austin
 Attn: Kathy Nunn
 401 Congress Avenue, Suite 1500
 Austin, Texas 78701
 (512) 505-5000
 (512) 505-5024 (facsimile)

City: City of Leander
 Attn: City Manger
 P.O. Box 319
 Leander, TX 78646-0319
 (512) 259-1178
 (512) 528-2831 (facsimile)

CTRMA: Central Texas Regional Mobility Authority
 Attn: Executive Director
 301 Congress Avenue, Suite 650
 Austin, Texas 78701
 (512) 996-9778
 (512) 996-9784 (facsimile)

TxDOT: Texas Department of Transportation
 Attn: Bruce Jensen, Supervisor, ENV-HIST
 Dewitt C. Greer Office Building
 125 East 11th Street
 Austin, Texas 78701
 (512) 416-2628
 (512) 416-2924 (facsimile)

- (d) Escrow Agent shall not be obligated to determine or resolve conflicting demands or claims to funds, documents or items deposited in escrow or conflicting demands or claims concerning the validity or interpretation of, or performance under, this Escrow Agreement. Until such conflicting demands or claims have been determined, resolved or eliminated by written agreement of the Parties, a valid amendment to this Escrow Agreement or a final order of judgment of the

court of competent jurisdiction, Escrow Agent shall be authorized to (i) refrain from carrying out its duties hereunder, and to retain in escrow any funds, documents or items that are the subject of the conflict or that may be dependent on or affected by the resolution of the conflict or (ii) interplead the subject matter of this Escrow into any court of competent jurisdiction and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities and responsibilities hereunder. In that regard, the Parties hereto expressly acknowledge Escrow Agent's right to interplead the Escrowed Items into a court of competent jurisdiction in Williamson County, Texas as provided by this Agreement.

- (e) This Escrow Agreement may be amended only by means of a written amendment signed by all the Parties to this Escrow Agreement. Any purported oral amendment of this Escrow Agreement shall be ineffective and invalid.
- (f) This Escrow Agreement may be executed in counterparts, each of which individually shall be an original and all of which together shall constitute but one and the same document. Any signature page to any counterpart of this Escrow Agreement may be detached from such counterpart without impairing the legal effect of the signature thereon and thereafter attached to another counterpart identical thereto except having to it additional signature pages.
- (g) The captions contained in this Escrow Agreement are for purposes of identification only and shall not be considered in construing this Escrow Agreement.
- (h) This Escrow Agreement shall be governed by the laws in the State of Texas.
- (i) This Escrow Agreement shall be binding on the Parties hereto and their respective heirs, executives, administrators, successors and assigns when all Parties have executed and delivered a counterpart hereof.
- (j) Each Party represents that it has full power and authority rightfully to execute and deliver this Escrow Agreement and to perform the actions contemplated hereby.

13. **CONFLICT WITH MOA.** In the event of a conflict between any term, provision or condition of the MOA and this Escrow Agreement, the terms, conditions and provisions of the MOA shall govern with respect to the Parties.

14. **EFFECTIVE DATE.** The Effective Date shall be the date the last of the Parties shown below executes this Escrow Agreement.

15. **TERM.** This Escrow Agreement shall terminate when all Escrowed Funds have been disbursed in accordance with the terms hereof.

IN WITNESS WHEREOF, the City, CTRMA, TxDOT, and Escrow Agent have executed this Escrow Agreement to be effective as of the Effective Date.

The City:

City of Leander, Texas

Attest:

Debbie Haile, City Secretary
Date: _____

By: _____
Name: John D. Cowman
Title: Mayor
Date: _____

Escrow Agent:

Heritage Title Company of Austin, Inc.

By:
Name: Kathy Nunn
Title: _____
Date:

CTRMA:

Central Texas Regional Mobility Authority

By:
Name:
Title:
Date:

TxDOT:

Texas Department of Transportation

By: _____
Name:
Title:
Date:

EXHIBIT "A"
MEMORANDUM OF AGREEMENT ("MOA")

EXHIBIT "B"
DRAW REQUEST

Date: _____

Heritage Title Company of Austin, Inc.
401 Congress Avenue, Suite 1500
Austin, TX 78701

Re: Escrow Agreement by and between City of Leander ("City"), Central Texas Regional Mobility Authority ("CTRMA"), Texas Department of Transportation ("TxDOT"), and Heritage Title Company of Austin, Inc. ("Escrow Agent")

To Whom It May Concern:

In connection with the above captioned escrow, the undersigned hereby requests disbursement from the captioned escrow as follows:

\$ _____ draw request for Payment Period: _____, 201__.

\$ _____ Amount Remaining in Escrow following Current Draw.

The undersigned certifies that these funds are requested exclusively for the purpose of:

1. [Cite language of the MOA describing and authorizing the purpose for the expense to be paid or reimbursed by this draw request (e.g., "Stipulation II.A. and III.B.1.A. of the MOA, payment on contract to prepare the Phase 1 Preservation Plan")]

The undersigned further certifies that:

1. in connection with work described by this draw request, the City, where explicitly required by the MOA, has acted in consultation with the Williamson County Historic Commission, the Texas State Historic Preservation Officer, and any other consulting parties;
2. all work described by this draw request has been undertaken in compliance with applicable local, state, and federal laws and regulations; and
3. City has provided a true and correct copy of this draw request to CTRMA and to TxDOT contemporaneously with submission of this draw request to the Escrow Agent, using the same method of notice it used to give notice of this draw request to Escrow Agent.

True and correct records and documents are available and in the possession of the City to document the expenses included in this draw request.

Sincerely,

City of Leander, Texas

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

EXHIBIT "C"
ESCROW AGENT FEE SCHEDULE