

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

RESOLUTION NO. 10-100

**Authorizing a Contract to Acquire Certain Property in Travis County
for the US 290 East Toll Project ("Manor Expressway")
(Parcel 53)**

WHEREAS, pursuant to and under the authority of Subchapter E, Chapter 370, Texas Transportation Code, its Resolution 10-50, and other applicable law, the Central Texas Regional Mobility Authority ("CTRMA") 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 0.950 acres described by metes and bounds in the Real Estate Contract attached as Exhibit "A" to this Resolution (the "Subject Property"), owned by AUSTIN HB RESIDENTIAL PROPERTIES, LTD. (the "Owner"), 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 a contract to purchase the Subject Property in the form or substantially the same form 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 \$581,600.00.

[Signatures on next page]

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 27th day of October, 2010.

Submitted and reviewed by:



Andrew Martin
Andrew Martin, General Counsel
Central Texas Regional Mobility Authority

Approved:



Ray A. Wilkerson
Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number 10-100
Date Passed: 10/27/10

Exhibit A: Real Estate Contract for Parcel 53

REAL ESTATE CONTRACT
Highway 290E Right of Way

State of Texas
County of Travis

THIS REAL ESTATE CONTRACT ("Contract") is made by Austin HB Residential Properties, Ltd, a Texas limited partnership (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 herein.

ARTICLE I
PURCHASE AND SALE

1.01. 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 0.950 acre tract of land, more or less, out of the William H. Sanders Survey No. 54, Abstract No. 690, Travis County, Texas; being more fully described by metes and bounds in Exhibit "A", attached hereto and incorporated herein (Parcel 53);

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

2.01. The purchase price for the Property and any improvements situated thereon shall be the sum of five hundred eighty-one thousand six hundred dollars and no cents (\$581,600.00), hereinafter called the "Purchase Price".

Payment of Purchase Price

2.02. The Purchase Price shall be payable in cash at the Closing, hereinafter defined.

**ARTICLE III
MISCELLANEOUS CONDITIONS**

3.01. 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**

4.01. 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 date of the Closing, to the best of Seller's current actual knowledge:

(1) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers.

(2) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, or any part thereof.

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

4.03. PROPERTY CONDITION: PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS EXPERIENCED IN THE OWNERSHIP OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT PURCHASER PRIOR TO THE CLOSING DATE WILL HAVE INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. PURCHASER ACKNOWLEDGES THAT IT IS FULLY RELYING ON PURCHASER'S (OR PURCHASER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS (OR PURCHASER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING DATE WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY), AND PURCHASER ACKNOWLEDGES THAT PURCHASER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS CONTRACT AND THE PURCHASE, PURCHASER HEREBY AGREES TO ACCEPT THE PROPERTY ON THE CLOSING DATE IN ITS "AS IS", "WHERE IS" CONDITION AND WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND,

EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, EXCEPT ONLY THE TITLE WARRANTIES EXPRESSLY SET FORTH IN THE DEED DATED ON THE CLOSING DATE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN CONNECTION WITH THE SALE OF THE PROPERTY TO PURCHASER, SELLER AND SELLER'S OFFICERS, AGENTS, DIRECTORS, EMPLOYEES, ATTORNEYS, CONTRACTORS AND AFFILIATES ("SELLER'S RELATED PARTIES") HAVE MADE NO, AND SPECIFICALLY DISCLAIM, AND PURCHASER ACCEPTS THAT SELLER AND SELLER'S RELATED PARTIES HAVE DISCLAIMED, ANY AND ALL REPRESENTATIONS, GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW (EXCEPT AS TO TITLE AS HEREINABOVE PROVIDED), OF OR RELATING TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, OF OR RELATING TO (I) THE USE, INCOME POTENTIAL, EXPENSES, OPERATION, CHARACTERISTICS OR CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC OR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE CONSTRUCTION, (II) THE NATURE, MANNER, CONSTRUCTION, CONDITION, STATE OF REPAIR OR LACK OF REPAIR OF ANY IMPROVEMENTS LOCATED ON THE PROPERTY, ON THE SURFACE OR SUBSURFACE THEREOF, WHETHER OR NOT OBVIOUS, VISIBLE OR APPARENT, (III) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE PROPERTY, (IV) THE ENVIRONMENTAL CONDITION OF THE PROPERTY AND THE PRESENCE OR ABSENCE OF OR CONTAMINATION BY HAZARDOUS MATERIALS, OR THE COMPLIANCE OF THE PROPERTY WITH REGULATIONS OR LAWS PERTAINING TO HEALTH OR THE ENVIRONMENT, AND (V) THE SOIL CONDITIONS, DRAINAGE, FLOODING CHARACTERISTICS, UTILITIES OR OTHER CONDITIONS EXISTING IN, ON, OR UNDER THE PROPERTY. THE PURCHASER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES, AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY. PURCHASER ACKNOWLEDGES THAT ANY CONDITION OF THE PROPERTY WHICH PURCHASER DISCOVERS OR DESIRES TO CORRECT OR IMPROVE PRIOR TO OR AFTER THE CLOSING DATE SHALL BE AT PURCHASER'S SOLE EXPENSE. PURCHASER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL LAW, STATE OR OTHER LAW THAT PURCHASER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY. ANY REPAIRS PAID FOR BY SELLER PURSUANT TO THIS CONTRACT, IF ANY, SHALL BE DONE WITHOUT ANY WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING.

ARTICLE V CLOSING

Closing Date

5.01. The consummation of the transaction contemplated in this Contract, herein called the "Closing", shall be held at the office of Heritage Title Company, Attn: Bailey Cook, 401 Congress Avenue, Suite 1500, Austin, Texas 78701, on or before November 19, 2010, or at such time, date, and place as Seller and Purchaser may agree in writing upon but no later than November 19, 2010 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"). North American Title Company, Attn: Jeanine West, 823 Congress Avenue, Suite 1400, Austin, Texas 78701, will facilitate the underwriting of the title to the property and will issue the Texas Owner's Title Policy. Heritage Title Company will serve as the title company for the Closing, and both title companies will share equally in any fees applicable to the issuance of such title policy.

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 to the State of Texas in fee simple to all of the Property described in Exhibit "A", free and clear of any and all monetary liens, except for the following:

- (a) General real estate taxes for the year of Closing and subsequent years not yet due and payable;
- (b) Any exceptions approved by Purchaser pursuant to Article III hereof; and,
- (c) Any exceptions approved by Purchaser in writing.

The deed shall be in the form as shown in Exhibit "B" attached hereto.

(2) Deliver to Purchaser a Texas Owner's Title Policy at Purchaser's sole expense, issued by Title Company, in Grantee's favor in the full amount of the Purchase Price, insuring Grantee's title to the Property subject only to those title exceptions listed herein, 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 at Purchaser's expense;

- (b) 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"; and,
- (c) Deliver to Purchaser possession of the Property at Closing.

Purchaser's Obligations at Closing

5.03. At the Closing, Purchaser shall:

- (a) Pay the cash portion of the Purchase Price and any additional compensation.

Prorations

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 next preceding year applied to the latest assessed valuation. Agricultural roll-back taxes, 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) Texas 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 cost of Closing shall be paid by Purchaser.
- (4) Attorney's fees paid by each respectively.

**ARTICLE VI
BREACH BY SELLER**

6.01. Purchaser has notified Seller that it has a right to condemn the Property under Subchapter E, Chapter 370, Texas Transportation Code, the provisions of the Texas Constitution, and any other procedures contained in the Texas Eminent Domain Procedure Law and that, unless Seller sells the Property to Purchaser pursuant to this Contract Purchase, Purchaser will exercise its condemnation rights under applicable law to condemn the Property. Therefore, Seller is entering into this Contract under the threat of condemnation of the Property.

6.02. 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 will initiate condemnation proceedings.

**ARTICLE VII
BREACH BY PURCHASER**

7.01. In the event Purchaser should fail to consummate the purchase of the Property and Purchaser being in default and Seller not being in default hereunder, Seller shall have the right to enforce specific performance of this Contract.

**ARTICLE VIII
MISCELLANEOUS**

Notice

8.01. 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

8.02. 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

8.03. 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

8.04. 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

8.05. 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

8.06. Time is of the essence in this Contract.

Gender

8.07. 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

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

Compliance

8.09 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

8.10 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

8.11 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.

Offer to Sell Expiration

8.12 The offer by Seller to sell the Property to Purchaser under the terms and conditions set forth herein, shall become null and void should Seller not receive a copy of this Contract duly executed by Purchaser on or before November 1, 2010 at 5:00PM.

SELLER:

Austin HB Residential Properties, Ltd.

a Texas limited partnership

By its General Partner: Austin HB Residential Ventures, Inc.,

A Texas Corporation

Signed: _____

David M. Buicko, Executive Vice President

1010 Rio Grande Street, Suite B

Austin, Texas 78701

Date: _____

PURCHASER:

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____

Mike Heiligenstein, Executive Director

301 Congress Ave., Suite 650

Austin, Texas 78701