

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

**RESOLUTION NO. 11-112**

**AUTHORIZING A CONTRACT TO ACQUIRE CERTAIN PROPERTY IN TRAVIS  
COUNTY FOR THE US 290 EAST TOLL PROJECT (“MANOR EXPRESSWAY”)  
(Parcel 37)**

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 2.030 acres described by metes and bounds in the Real Estate Contract attached as Exhibit “A” to this Resolution (the “Subject Property”), owned by Scott William Elder, (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 \$853,404.

*[Signatures on next page]*

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 28<sup>th</sup> day of July, 2011.

Submitted and reviewed by:



Andrew Martin, General Counsel  
Central Texas Regional Mobility Authority

Approved:



Ray A. Wilkerson  
Chairman, Board of Directors  
Resolution Number 11-112  
Date Passed: 7/28/11

**Exhibit "A" to Resolution 11-112**

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

THIS REAL ESTATE CONTRACT ("Contract") is made by SCOTT WILLIAM ELDER (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 2.030 acre tract of land, more or less, out of the Lucas Munos Survey No. 35, Abstract No.5134, Travis County, Texas; being more fully described by metes and bounds in Exhibit "A", attached hereto and incorporated herein (Parcel 37)

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" not otherwise agreed herein to be retained by Seller, 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, any improvements thereon, and any damage or cost to cure for the remaining Property of Seller shall be the sum of EIGHT HUNDRED FIFTY THREE THOUSAND FOUR HUNDRED FOUR AND 00/100 Dollars (\$853,404.00).

Pursuant to the terms of a Possession and Use Agreement recorded in Document No. 2011059611, Purchaser has previously paid to Seller the amount of \$535,809.00 for which Purchaser shall receive a credit herein, leaving a remaining Purchase Price to be paid at the closing of this transaction of **THREE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED NINETY FIVE and 00/100 Dollars (\$317,595.00)**.

Payment of Purchase Price

2.02. The Purchase Price 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 current actual knowledge:

(1) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers, other than a lease with Fazenda Inc., d/b/a Dream Cars Credit, as previously disclosed to Purchaser;

(2) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, 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 Heritage Title Company on or before August 15<sup>th</sup>, 2011, 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 to the State of Texas 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;
- (b) Any exceptions approved by Purchaser pursuant to Article III hereof; and
- (c) Any exceptions approved by Purchaser in writing.

(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 Purchaser'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;
- (b) The exception as to restrictive covenants shall be endorsed "None of Record", if applicable; 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 Closing

5.03. At the Closing, Purchaser shall:

- (a) Pay the cash portion of the Purchase Price.

### 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) 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.

## **ARTICLE VI 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, if any, shall be forthwith returned by the title company to Purchaser.

**ARTICLE VII  
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, if any, 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. If no Escrow Deposit has been made then Seller shall receive the amount of \$500 as liquidated damages for any failure by Purchaser.

**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.

*[signature page follows]*

**SELLER:**

\_\_\_\_\_  
Scott William Elder

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**PURCHASER:**

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: \_\_\_\_\_  
Mike Heiligenstein, Executive Director  
Date: \_\_\_\_\_

Address: 301 Congress Ave.  
Suite 650  
Austin, Texas 78701

**EXHIBIT** \_\_\_\_\_

**County:** Travis  
**Parcel No.:** 37  
**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 37**

DESCRIPTION OF 2.030 ACRES (88,418 SQUARE FEET) OF LAND OUT OF THE LUCAS MUNOS SURVEY NO. 55, ABSTRACT NO. 513, IN AUSTIN, TRAVIS COUNTY, TEXAS, SAME BEING ALL OF THAT CERTAIN TRACT OF LAND DESCRIBED AS 2.03 ACRES IN A DEED TO SCOTT WILLIAM ELDER, OF RECORD IN DOCUMENT 2006014936, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS; SAID 2.030 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found, to be replaced with a TxDOT Type II concrete monument after acquisition, 230.94 feet right of Engineer's Baseline Station 380+35.16, at the southeast corner of the herein described tract and of said Elder tract, and the southwest corner of that certain tract of land described as 1.987 acres in a deed to Central Texas Regional Mobility Authority, of record in Document 2009137994, Official Public Records, Travis County, Texas, same being in the existing north right-of-way (ROW) line of Old State Highway 20, a public ROW for which no record conveyance was found, as shown on TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT) ROW map CSJ# 0114-02-012, from which point a mag nail found, to be replaced with a TxDOT Type II concrete monument after acquisition, 193.91 feet right of Engineer's Baseline Station 382+49.70, in the south line of said Central Texas Regional Mobility Authority tract and the existing north ROW line of Old State Highway 20 bears N74°14'57"E 217.71 feet;

- 1) THENCE, with the south line of this tract and said Elder tract, and the existing north ROW line of Old State Highway 20, **S74°16'52"W 350.46 feet** to a 1/2" iron rod found, to be replaced with a TxDOT Type II concrete monument after acquisition, 290.35 feet right of Engineer's Baseline Station 376+89.77, at the southwest corner of this tract and of said Elder tract, and the southeast corner of Lot 2, Block A, N Line Subdivision, of record in Document No. 200400101, Official Public Records, Travis

**EXHIBIT** \_\_\_\_

County, Texas, said Lot 2 being described in a deed to Delfino Perez and Reyna Perez, of record in Document 2004235700, Official Public Records, Travis County, Texas, from which point a 1/2" iron rod found in the south line of said Perez tract, and in the existing north ROW line of Old State Highway 20, bears  $S74^{\circ}01'04''W$  584.40 feet;

THENCE, with the west line of this tract and said Elder tract, and the east line of said Perez tract, the following two (2) courses numbered 2 and 3;

- 2) with the proposed south ROW line of U.S. Highway 290,  **$N05^{\circ}42'10''W$  75.36 feet** to a 1/2" iron rod set with a TxDOT aluminum cap to be replaced with a TxDOT Type II concrete monument after acquisition, 215.00 feet right of Engineer's Baseline Station 376+90.11; and
- 3)  **$N05^{\circ}42'10''W$** , at 216.68 feet passing a 1/2" iron rod found, in all a total distance of **217.14 feet** to a calculated point, at the northwest corner of this tract and said Elder tract, and the northeast corner of said Perez tract, same being in the existing south ROW line of U.S. Highway 290, and the south line of that certain tract of land described as 4.233 acres in deeds to the State of Texas, of record in Volume 3057, Page 1540 and Volume 3122, Page 1826, Deed Records, Travis County, Texas;

THENCE, with the north line of this tract and said Elder tract, and with the existing south ROW line of U.S. Highway 290, and the south line of said 4.233 acre State of Texas tract, the following three (3) courses numbered 4, 5, and 6;

- 4)  **$N84^{\circ}02'10''E$  135.96 feet** to a calculated point, from which a TxDOT Type I concrete monument found bears  $S05^{\circ}57'50''E$  0.56 feet;
- 5)  **$N89^{\circ}44'59''E$  200.89 feet** to a calculated point, from which a TxDOT Type I concrete monument found bears  $S05^{\circ}57'50''E$  0.46 feet; and
- 6)  **$N84^{\circ}02'10''E$  8.25 feet** to a calculated point, at the northeast corner of this tract and said Elder tract, and the northwest corner of said Central Texas Regional Mobility Authority tract;

**EXHIBIT** \_\_\_\_

- 7) THENCE, with the east line of this tract and said Elder tract, and the west line of said Central Texas Regional Mobility Authority tract, **S05°57'07"E**, at 0.19 feet passing a 1/2" iron rod found, in all a total distance of **213.11 feet** to the POINT OF BEGINNING and containing 2.030 acres 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.


**STATE OF TEXAS**       §  
                                  §       **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 3rd day of December, 2010 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 P37 R5

Issued 02/02/07, Rev 03/20/07, 09/17/10, 12/3/10



# FINAL CLOSURE PARCEL 37 US HIGHWAY 290

## PARCEL 37 - SKETCH MAPCHECK

North: 10092862.9684 East: 3148478.4087  
Course: S 74-16-52 W Distance: 350.46000  
North: 10092768.0225 East: 3148141.0550  
Course: N 05-42-10 W Distance: 292.50000  
North: 10093059.0748 East: 3148111.9899  
Course: N 84-02-10 E Distance: 135.96000  
North: 10093073.2013 East: 3148247.2140  
Course: N 89-44-59 E Distance: 200.89000  
North: 10093074.0788 East: 3148448.1021  
Course: N 84-02-10 E Distance: 8.25000  
North: 10093074.9360 East: 3148456.3074  
Course: S 05-57-07 E Distance: 213.11000  
North: 10092862.9749 East: 3148478.4057

Perimeter: 1201.17000

Area: 88417.81329 2.02979 acres  
Mathematical Closure - (Uses Survey Units)  
Error of Closure: 0.007136 Course: S 24-27-48 E  
Precision 1: 168318.86

## PARCEL 37 - STRIPMAP MAPCHECK

North: 10088336.8983 East: 3148211.3742  
Course: S 74-16-52 W Distance: 350.46000  
North: 10088241.9525 East: 3147874.0205  
Course: N 05-42-10 W Distance: 292.50000  
North: 10088533.0048 East: 3147844.9554  
Course: N 84-02-10 E Distance: 135.96000  
North: 10088547.1313 East: 3147980.1795  
Course: N 89-44-59 E Distance: 200.89000  
North: 10088548.0088 East: 3148181.0676  
Course: N 84-02-10 E Distance: 8.25000  
North: 10088548.8660 East: 3148189.2729  
Course: S 05-57-07 E Distance: 213.11000  
North: 10088336.9048 East: 3148211.3712

Perimeter: 1201.17000

Area: 88417.81329 2.02979 acres  
Mathematical Closure - (Uses Survey Units)  
Error of Closure: 0.007136 Course: S 24-27-48 E  
Precision 1: 168318.86

# FINAL CLOSURE PARCEL 37 US HIGHWAY 290

## PARCEL 37 - DESCRIPTION MAPCHECK

North: 10094579.5966 East: 3166649.7913

Course: S 74-16-52 W	Distance: 350.46000
North: 10094484.6508	East: 3166312.4376
Course: N 05-42-10 W	Distance: 75.36000
North: 10094559.6378	East: 3166304.9492
Course: N 05-42-10 W	Distance: 217.14000
North: 10094775.7031	East: 3166283.3724
Course: N 84-02-10 E	Distance: 135.96000
North: 10094789.8296	East: 3166418.5966
Course: N 89-44-59 E	Distance: 200.89000
North: 10094790.7071	East: 3166619.4847
Course: N 84-02-10 E	Distance: 8.25000
North: 10094791.5643	East: 3166627.6900
Course: S 05-57-07 E	Distance: 213.11000
North: 10094579.6031	East: 3166649.7883

Perimeter: 1201.17000

Area: 88417.81329	2.02979 acres
Error of Closure: 0.007136	Course: S 24-27-48 E
Precision 1: 168318.86	