

**MARCH 30, 2011 CTRMA BOARD OF DIRECTORS MEETING
Summary Sheet**

AGENDA ITEM # 4

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.

Department: Law/Engineering

Associated Costs: \$1,000,000.00

Funding Source: TxDOT Toll Equity Grant for 183A

Board Action Required: Yes

Description of Matter:

On July 30, 2008, the CTRMA Board of Directors passed Resolution 08-43 (a copy is included for reference) approving a Memorandum of Agreement (the "MOA") between the Federal Highway Administration, the Advisory Council on Historic Preservation, and the Texas State Historic Preservation Officer relating to the Pioneer House on the J.C. Bryson Farmstead, a Recorded Texas Historic Landmark affected by proposed improvements to the intersection of the 813A Turnpike and proposed County Road 274. Resolution 08-43 also authorized CTRMA's executive director to execute the MOA on behalf of CTRMA as an invited signatory to that agreement. The MOA set forth stipulations needed to fully comply with Section 106 of the National Historic Preservation Act as that federal law was applied to proposed intersection improvements. The MOA became effective on October 31, 2008, upon its execution by the various parties to the agreement.

Under the MOA, CTRMA agreed (among other things) to provide \$1,000,000.00 to fund action by the City of Leander to prepare and implement a Preservation Plan for the Bryson Farmstead, in consultation with the Williamson County Historic Commission and the Texas State Historic Preservation Officer. The funds were to be deposited and held in escrow, subject to terms and conditions to be established by an escrow agreement consistent with the MOA as agreed upon by CTRMA, TxDOT, and the City of Leander.

Staff from CTRMA, TxDOT, and the City of Leander have discussed in general the terms and conditions to be included in the escrow agreement that are needed to fulfill the requirements of the MOA, and have worked from a draft escrow agreement provided by the City of Leander. TxDOT and CTRMA attorneys have proposed revisions to the draft escrow agreement and have provided a copy of the revised version to the City of Leander for its review and comment.

The proposed resolution authorizes the executive director to negotiate and sign on behalf of the CTRMA the proposed escrow agreement between CTRMA, TxDOT, and the City of Leander in the form of or substantially in the form of the proposed agreement set forth in Attachment A to the resolution.

Attached documentation for reference:

CTRMA Resolution 08-43

Recorded copy of the MOA

Resolution 11-___, with the proposed Escrow Agreement attached as Attachment "A" to that resolution

Contact for further information:

Andrew Martin, General Counsel

Wesley M. Burford, P.E., Director of Engineering

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

RESOLUTION NO. 08-43

WHEREAS, the Central Texas Regional Mobility Authority ("CTRMA") was created pursuant to the request of Travis and Williamson Counties and in accordance with provisions of the Transportation Code and the petition and approval process established in 43 Tex. Admin. Code § 26.01, *et. seq.* (the "RMA Rules"); and

WHEREAS, Chapter 370 of the Texas Transportation Code authorizes regional mobility authorities to develop projects through the use of comprehensive development agreements ("CDAs"); and

WHEREAS, the CTRMA identified the 183-A Turnpike Project (the "Project") as its initial project in a petition filed under the RMA Rules; and

WHEREAS, the environmental review process required by the National Environmental Policy Act for the Project was undertaken and completed by the Texas Department of Transportation ("TxDOT"), with the Final Environmental Impact Statement being approved on May 10, 2001 and the Record of Decision being issued July 19, 2001 ("Environmental Process"); and

WHEREAS, in Minute Order No. 109877, approved on November 18, 2004, the Texas Transportation Commission granted its approval of the Project and the development thereof by the CTRMA subject to the conditions therein specified; and

WHEREAS, in Resolution No. 04-43, dated September 8, 2004, the Board of Directors approved of the selection of Hill Country Constructors as the Developer of the Project and subsequently entered into a CDA for the development and construction of the Project; and

WHEREAS, in Resolution No. 05-06, dated January 26, 2005, the Board of Directors approved entering into a Project Development Agreement with the TxDOT regarding the various project development issues related to construction, completion and operation of the Project, all to be consistent with the Environmental Process; and

WHEREAS, Hill Country Constructors undertook construction of the Project and the Project was opened to use by the traveling public on March 3, 2007; and

WHEREAS, on or about August 15, 2006, a previously unidentified historic structure (referred to as the "Bryson Farmstead") was discovered as part of the environmental review process for Williamson County Road 274 and its planned intersection with the Project and construction of the Project in the general area of the Bryson Farmstead was temporarily halted; and

WHEREAS, in accordance with Section 106 of the National Historic Preservation Act ("Section 106"), various interested parties including the Environmental Division of TxDOT, the Federal Highway Administration, the Texas State Historical Preservation Officer, the Advisory Council on Historic Preservation, the Owners of the Bryson Farmstead, the CTRMA and others held meetings to determine the efforts and remedies necessary to address the discovery of the Bryson Farmstead and the potential impact the Project and the intersection with County Road 274 might have on the Bryson Farmstead; and

WHEREAS, a Letter Agreement was executed effective October 18, 2006 that set forth what undertakings would be necessary relating to the possible impact of the Project on the Bryson Farmstead, including the ultimate execution of a Memorandum of Agreement (the "MOA") by and among the various parties; and

WHEREAS, the Letter Agreement provided that the construction of the Project in the area of the Bryson Farmstead could resume, however, the Project's Environmental Process will require reevaluation prior to the construction of the intersection with County Road 274; and

WHEREAS, all of the parties have continued their respective efforts to address the requirements of the Letter Agreement, as well as develop the final form of the MOA, and such final form is attached hereto as Attachment "A" and incorporated herein for all purposes; and

WHEREAS, the MOA substantially in the form attached hereto is being considered by each of the respective parties for final execution in order to complete the requirements of the Letter Agreement and set forth the stipulations necessary to fully comply with Section 106, upon the execution of which the necessary reevaluations under the Project's Environmental Process may also be completed; and


WHEREAS, the CTRMA staff recommends that the CTRMA enter into the attached MOA for the purposes stated therein and in this Resolution.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves execution of the MOA in the form attached hereto as Attachment "A" for the purposes set forth therein and in this Resolution; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized to execute such MOA in its final form on behalf of the CTRMA, with the MOA being effective upon its full execution by all of the other parties thereto.


Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 30th day of July 30, 2008.

Submitted and reviewed by:



Tom Nielson
General Counsel for the Central
Texas Regional Mobility Authority

Approved:



Robert E. Tesch
Chairman, Board of Directors
Resolution Number 08-43
Date Passed 07/30/08

Attachment "A"

Memorandum of Agreement for Bryson Farmstead

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

WHEREAS, the Federal Highway Administration (FHWA) plans to approve an at grade intersection of the 183A Turnpike and proposed County Road 274 (also known as the San Gabriel Parkway) in Williamson County, Texas (the Undertaking) pursuant to 23 CFR § 771.129(c) of the regulations implementing Department of Transportation Act (23 U.S.C. § 103); and

WHEREAS, ultimately the Undertaking is anticipated to allow proposed County Road (CR) 274 to cross a new six-lane controlled access freeway with intermittent three-lane frontage roads as shown in **Figure 1**; and

WHEREAS, the "Pioneer House" (as described below) which is a Recorded Texas Historic Landmark, and is also known as the J. C. Bryson Farmstead was discovered after construction of 183A began; and

WHEREAS, FHWA has defined the Undertaking's area of potential effect (APE) as the J. C. Bryson Farmstead (Farmstead) comprising approximately 224.38 acres and is inclusive of the intersection of 183A and proposed County Road 274; and

WHEREAS, FHWA has consulted with the Alabama-Coushatta Tribe of Texas, the Alabama-Quassarte Tribal Town, the BIA – Andarko, the Apache Tribe of Oklahoma, the Caddo Nation of Oklahoma, the Comanche Tribe of Oklahoma, the Delaware Nation, the Eastern Shawnee Tribe of Oklahoma, the Kickapoo of Kansas, the Kiowa Indian Tribe

of Oklahoma, the Mescalero Apache Tribe, the Seminole Nation of Oklahoma, the Thlopthlocco Tribal Town, the Tonkawa Tribe of Indians of Oklahoma, and the Wichita and Affiliated Tribes pursuant to 36 CFR part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and has determined that the Undertaking will not affect historic properties of cultural or religious significance to federally-recognized tribes; and

WHEREAS, FHWA has determined that the Undertaking will have adverse effects to the J.C. Bryson Farmstead, which is eligible for listing on the National Register of Historic Places, and has consulted with the Texas State Historic Preservation Officer (TXSHPO) pursuant to 36 CFR part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, FHWA has consulted with Mr. Roy Butler, and Mr. Sam Winters (the Property Owners), Preservation Texas, the Williamson County Historical Commission (WCHC), the City of Leander (the City), Williamson County Commissioners Court, and the Central Texas Regional Mobility Authority (CTRMA), regarding the effects of the Undertaking on historic properties and has invited them to sign this MOA as invited signatories and concurring parties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP is participating in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the Farmstead is owned by the Property Owners and is subject to the SmartCode Transit Oriented Development Ordinance of the City of Leander adopted September 22, 2005, as amended (the TOD), that establishes requirements for the development within the TOD and sets forth a specific process for all development and redevelopment within the TOD, including formal public input and administrative review and approval; and

WHEREAS, given that the TOD restricts the property to high density development with designed formal landscapes, the Property Owners of the Farmstead are willing to make available 6 acres of land, provided that the intersection location identified in the reevaluation of the 183A Record of Decision is selected, as shown as Option "A" in Figure 1; and

WHEREAS, the City has made provision in its TOD plan for green space funded by taxes collected in the TOD through a Tax Increment Financing (TIF) method; and is willing to accept 6 acres of land for the purpose of preserving a portion of the Farmstead; and

WHEREAS, a Preservation Easement shall be established relating to the 6 acres of land (as more formally described below) that will provide that any configuration or reconfiguration of the 6 acres shall be made in accordance with the TOD and in a manner sensitive to any preservation concerns as set forth herein so that the buildings and historical improvements located thereon are preserved and rehabilitated generally in conformity with applicable standards established by the United States Secretary of the Interior (as defined below); and

WHEREAS, a Memorandum of this MOA shall be recorded in the Official Records of Williamson County, Texas for notification purposes.

NOW, THEREFORE, FHWA, the ACHP, and the TXSHPO join herein as original signatories and agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties; and TxDOT, CTRMA, the Property Owners, Williamson County Commissioners Court, and the City of Leander join herein as invited signatories, with Preservation Texas, WCHC and Joe R. Magill (as a descendent of J.C. Bryson) joining herein as consulting signatories, all to evidence their respective acknowledgement of and agreement with the provisions of this MOA for all purposes.

STIPULATIONS

FHWA will ensure that the following measures are carried out in accordance with the Letter Agreement executed between Federal Highway Administration, the Texas

Department of Transportation, the Central Texas Regional Mobility Authority and State Historic Preservation Officer signed October 18, 2006:

I. Documentation

Within 2 years of the execution of the MOA TxDOT, in consultation with the TXSHPO and WCHC, shall prepare a county-wide comparative study of comparable historic properties. This comparative study will form the basis for the development of a Multiple Property historic farmstead document. The Multiple Property document shall be produced within 1 year of completion of the comparative study and include an historic context, property type definitions, and registration requirements to facilitate nomination of historic farmsteads by private property owners or the WCHC.

TxDOT shall also prepare documentation and recordation of the Farmstead to the Historic American Buildings Survey/Historic American Landscape Survey (HABS/HALS) within one year of the execution of the MOA, or an amended date agreed to by all signatory parties. TxDOT will provide 3 copies of the documentation to the TXSHPO for distribution to archival repositories, which shall include the Leander Public Library and the Williamson Museum.

II. Preservation Plan

A. The City shall conduct an adaptive use study and initial planning document (Phase I Preservation Plan) in consultation with WCHC and the TXSHPO to identify adaptive use options ensuring the long-term preservation of the historic property through appropriate preservation activities, public-private partnerships, and fiscal incentive programs, and to generally maintain and enhance the historic character of the historic property. The City shall complete the Phase I Preservation Plan within one year of the execution of the MOA, or an amended date (not to exceed 5 years) agreed to by all signatory parties.

B. The City shall, in consultation with the WCHC and the TXSHPO, and as a continuation of the Phase I Preservation Plan conduct studies of the Farmstead to develop a preservation master plan (Preservation Plan) to guide structural

rehabilitation of the historic buildings and the related cultural landscape in general accordance with applicable United States Secretary of the Interior Standards for Rehabilitation as codified in Section 36 CFR 67 (SOI Rehabilitation Standards). The Preservation Plan will include a cyclical maintenance plan for the historic buildings and landscape features, and design guidelines for development of the historic property and its incorporation into adjoining developments. The Preservation Plan will identify meaningful and measurable tools to soften or obscure visual and audible intrusions that may result from subsequent private development related to the TOD. The City shall conduct studies and prepare the Preservation Plan in consultation with the WCHC and TXSHPO and any other consulting parties. The Preservation Plan shall be finalized concurrent with the filing of the final subdivision plat of the property surrounding and/or abutting the 6 Acre Tract (as defined below) and the reconfiguration of the 6 Acre Tract.

C. The City shall be responsible for carrying out tasks identified in the Preservation Plan in consultation with the WCHC and the TXSHPO.

D. TxDOT and CTRMA, in consultation with the TXSHPO and any other consulting parties, will develop educational materials for local schools and the public, including the scope of this effort and time line.

E. The 6 Acre Tract as ultimately reconfigured, including the central core of the property, comprising the house, cistern, barns and sheds will remain eligible for listing in the NRHP. The remaining approximately 218.38 acres will no longer be eligible for listing in the NRHP due to its disassociation with the primary character-defining resources located on the 2 Acre Tract, through reconfiguration of the property, and the change in ownership. It is anticipated that the location of the intersection of 183A and proposed CR274 shall be as reflected as Option A on **Figure 1**. In no event shall the location of CR274 be nearer to the house, cistern and barns than as reflected as Option A on **Figure 1**.

III. Maximization of Preservation

A. CTRMA shall acquire from the Property Owners 6 contiguous acres to preserve the Recorded Texas Historic Landmark (RTHL). The 6 acre property shall consist of the following property and the acquisition shall be made upon the following terms:

1. A 2 acre tract (2 Acres) encompassing the house, cistern, barns and sheds as well as some surrounding land as shown in **Figure 2** shall be conveyed. The approximate metes and bounds description shall be as described in **Figure 2**.
2. A 4 acre tract (4 Acres) which adjoins the 2 Acres and as shown on **Figure 3** shall be conveyed. The approximate metes and bounds description shall be as described in **Figure 3**. The 2 Acres and the 4 Acres as a combined tract shall sometimes be referred to herein as the 6 Acre Tract.
3. A temporary access easement (Access Easement) providing ingress and egress to and from the 6 Acre Tract to a publicly dedicated road, substantially as described in **Figure 4**, shall be conveyed in connection with the 6 Acre Tract. In the event the Access Easement is revised or reconfigured, provisions for adequate ingress and egress to and from the 6 Acre Tract to a publicly dedicated road shall be provided. Upon the provision and establishment of permanent contiguous access to a publically dedicated road, the Access Easement shall be terminated.
4. The location and description of the 2 Acres, the 4 Acres and the Access Easement shall be properly surveyed prior to conveyance and such descriptions shall be made part of a special warranty deed (Deed) which shall be recorded in the Deed Records of Williamson County, Texas. Such conveyance shall be completed within 60-days after the execution of this MOA.

5. The purchase price to be paid for the 2 Acres and the 4 Acres shall be payable by the CTRMA to the Property Owners. The CTRMA shall pay all reasonable transaction costs related to this transaction, including any appraisal fees, title policy premiums, any roll back fees associated with prior agricultural valuation of the 6 Acre Tract, and recording fees. Each party shall pay its own attorneys fees. Conveyance shall only be subject to existing matters of record as of the date of closing, except no liens or exceptions to title related to the payment of money shall be permitted. In addition, the Property Owners shall have a continuing right of possession for the limited purpose set forth Stipulation III.A.8 below.

6. Contemporaneous with the recording of the Deed, a preservation easement (Preservation Easement) applicable to the entire 6 Acre Tract shall be recorded. The Preservation Easement shall be in form substantially as set forth in **Figure 5** and shall include, but not be limited to, the following provisions :

(a) upon the final subdivision of the 6 Acre Tract, maintenance of any domestic animals shall be prohibited on any portion of the 6 Acre Tract;

(b) the house, cistern and barns, as well as the remainder of the 6 Acre Tract shall be restored and maintained in accordance with SOI Rehabilitation Standards and such Standards shall be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility, and adequate security and other safeguards shall be instituted and maintained to ensure the 6 Acre Tract remains in its proper condition;

(c) to the extent the configuration of the 4 Acres is revised under the terms of the Reconfiguration Agreement (as described in Section III.7 below), the Preservation Easement shall continue to apply to the 2 Acres, and the 4 Acres as reconfigured; and

(d) the benefits of and the ability to enforce the Preservation Easement shall be retained by the Property Owners, and their heirs, successors and assigns, and additionally maintained by the TXSHPO.

7. The Property Owners and the CTRMA shall, contemporaneous with the delivery of the Deed, execute a Reconfiguration Agreement, enforceable against each party's heirs, successors and assigns, that will provide that the 4 Acres may be reconfigured in the future upon the following terms:

(a) the boundaries of the 4 Acres may be revised as necessary to address the requirements associated with developing the surrounding property consistent with the TOD, address the location and layout of roads and similar infrastructure, or address any requirements associated with the development and completion of 183A or proposed CR 274;

(b) any reconfiguration shall be made in a manner sensitive to preservation of the historic nature of the 6 Acre Tract as set forth in this MOA;

(c) any reconfiguration of the 4 Acres shall be completed in a manner that the reconfigured 4 Acres continues to encompass at least 4 Acres including any property necessary to provide permanent access to a publicly dedicated road, at which time the Access Easement shall terminate;

(d) any reconfiguration of the 4 acres may include dividing the 4 Acres into two or more tracts, so long as each reconfigured tract is contiguous to either the 2 Acres or the remainder of the reconfigured 4 acres, and that permanent access to a publicly dedicated road is made available to the 6 Acre Tract, as reconfigured;

(e) any reconfiguration of the 4 Acres or the Access Easement shall be subject to the reasonable review and approval of the Property Owners (or their heirs, successors and assigns) and approval of a final subdivision plat by the City; and

(f) all necessary documentation, conveyances and agreements will be executed by the proper parties and filed, as appropriate, to finalize any reconfiguration completed as provided herein.

8. The Property Owners and the CTRMA shall, contemporaneous with the delivery of the Deed, execute an Agricultural Agreement, enforceable against each party's heirs, successors and assigns, that will provide that the Property Owners shall have the right to occupy and use the 6 Acre Tract until the approval of the final plat of the 6 acres in a subdivision approved by the City, at which time the Property Owners will relinquish all rights to use and occupy the 6 Acre Tract to CTRMA, or its successor or assigns, no later than 45 days after such approval of the final plat in order that the Property Owners may give any tenant notice to vacate. During the time the Property Owners use and occupy the 6 Acre Tract, the Property Owners will be responsible for the upkeep and maintenance of the 6 Acre Tract and the improvements thereon, in substantially the same condition that same are in on the date of execution of this MOA. During the time of use and occupancy by the Property Owners, the Property Owners may lease the 6 Acre Tract to a tenant, subject to the obligation to relinquish use and occupancy possession on the final plat of the 6 Acre Tract as set forth above and pursuant to the terms of the Reconfiguration Agreement.

9. Within 120 days of the completion of the conveyance of the 6 Acre Tract and Access Easement to the CTRMA and recording of the Deed, the 6 Acre Tract and the Access Easement shall be conveyed to the City of Leander, who shall thereafter hold the property in perpetuity for preservation purposes.

B. CTRMA shall pay a fee of \$1,000,000.00 to offset all adverse Undertaking effects.

1. CTRMA shall pay a fee of \$1,000,000.00 for the purposes of:
 - (a) developing adaptive use options ensuring the long-term preservation of the historic property;
 - (b) conducting studies of the Farmstead to aid in the development of the Phase I Preservation Plan and final Preservation Plan to guide structural rehabilitation of the historic buildings and the related

cultural landscape as well as develop, in consultation with TxDOT and TXSHPO, educational materials for local schools and the public; and

(c) carrying out tasks identified in the Phase I Preservation Plan and final Preservation Plan by other parties.

2. CTRMA shall within 120-days of the execution of this MOA place the fee of \$1,000,000.00 in escrow (Escrowed Funds) to be managed by the City. The Escrowed Funds shall be for the sole purpose of preserving the Bryson Farmstead property as stipulated in Stipulation III.B.1. Such funds shall be escrowed subject to an escrow agreement by and among the City, the CTRMA and TxDOT that shall set forth terms and conditions necessary to ensure that all such funds are utilized in a transparent manner fully consistent with this MOA.

3. Any unused portion of the Escrowed Funds remaining 2 years after the finalization of the final Preservation Plan shall be returned to CTRMA, unless CTRMA extends the period by giving notice to the other signatory parties to the escrow agreement.

4. Dispersal of funds will be the responsibility of the City and the City shall provide TxDOT and CTRMA a quarterly report detailing expenditures incurred for the preservation of the Bryson Farmstead. All such expenditures shall be subject to audit by the CTRMA and/or the State Auditors Office.

5. Upon the CTRMA's purchase of the 6 Acre Tract and subsequent conveyance to the City, and delivery of the Escrowed Funds, the CTRMA shall have no further obligations under this MOA, except as they relate to Escrowed Funds under the escrow agreement or as specified in the Reconfiguration Agreement.

IV. RESOLVING OBJECTIONS

A. If an original, invited or consulting signatory party objects in writing to FHWA regarding the manner in which the terms of the MOA are carried out, FHWA shall consult with the objecting party to resolve the objection. If after such consultation FHWA determines that the objection cannot be resolved within 15 days, FHWA shall forward the documentation relevant to the objection to the ACHP, including FHWA's proposed response to the objection. Within 15 days after receipt of the documentation the ACHP shall exercise one of the following options:

1. Advise FHWA that the ACHP concurs in FHWA's proposed response to the objection, whereupon FHWA will respond to the objection accordingly.
2. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection.
3. Notify FHWA that the objection will be referred for formal comment in accordance with 36 CFR 800.7(c).

B. Should the ACHP not exercise one of the above options within 15 days after receipt of the documentation, FHWA may assume that ACHP concurs in its proposed response to the objection.

C. FHWA shall take into account a recommendation or comment made by ACHP provided in accordance with this section. FHWA's responsibility to carry out all actions under this MOA that are not the subject of objection shall remain unchanged. FHWA shall notify the other parties of its decision within 15 days.

V. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VI. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out by that signatory, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation V, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by the FHWA, ACHP, and TXSHPO and implementation of its terms evidence that FHWA has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

This MOA may be executed in one or more counterparts, each of which shall be considered an original for all purposes. Each signatory hereto has executed a separate signature page and originals of each page have been distributed to all other signatories.

Attachments:

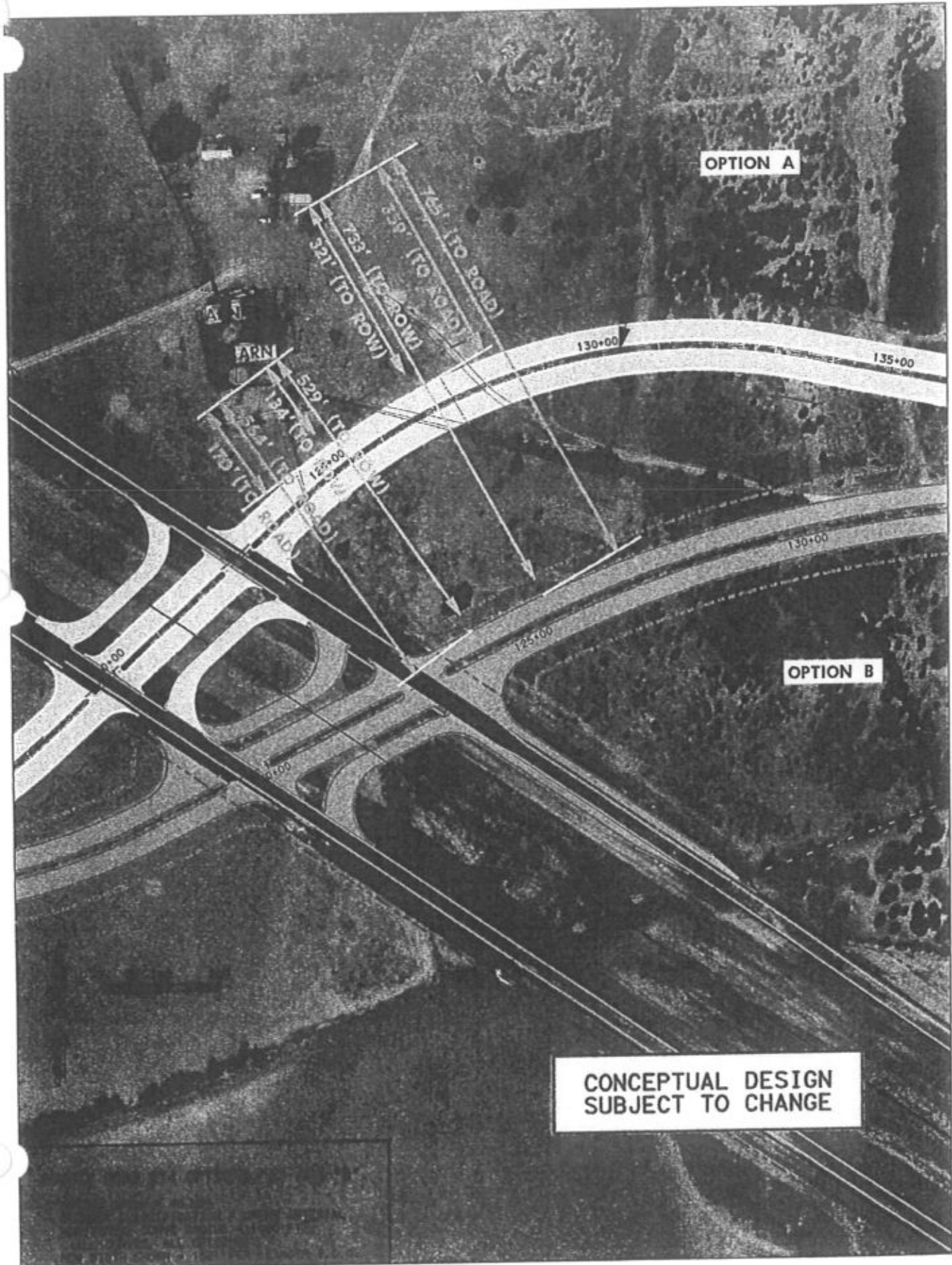
Figure 1 Ultimate Intersection of 183-A with CR 274

Figure 2 2 Acre Tract

Figure 3 4 Acre Tract

Figure 4 Access Easement

Figure 5 General Form of Preservation Easement



OPTION A

OPTION B

CONCEPTUAL DESIGN
SUBJECT TO CHANGE

SKETCH TO ACCOMPANY DESCRIPTION TRACT 3 - 4,000 AC. TRACT



J. SAMPSON AND SONS, BUREN
SECURITY FORESTRY
TRACT 1, GRATED 320.26 ACRES
VOLUME 241, PAGE 284
SUBJECT.

- ### LEGEND
- 1/2" BORED PILING
 - BORED HOLE CAP FOUND
 - △ NAILERS
 - 1/2" BORED HOLE TAKE-UP OF CAP SET
 - ≡ UTILITY POLE
 - ≡ LIGHT POLE
 - ≡ BRIDGE
 - ≡ ABUNDANCE
 - OVERHEAD UTILITY LINE
 - CANYON
 - CHANNEL DITCH
 - WOOD FENCE
 - WIRE FENCE
 - RICHNESS

TRACT 3
4,000 AC. TRACT

WILSON HUNTER TRACT
TRACT 1 TO BE
WILSON COUNTY, TENN

J. SAMPSON AND SONS, BUREN
SECURITY FORESTRY
TRACT 1, GRATED 320.26 ACRES
VOLUME 241, PAGE 284
SUBJECT.

TRACT 1
2,000 AC. TRACT



N 12° 52' 00" W 11' 00.00' DA = 22' 13' 00" DA = 18' 10' 00" DA = 18' 10' 00" DA = 18' 10' 00" DA = 18' 10' 00"
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N 12° 52' 00" W
11' 00.00' DA

COUNTY ROAD 276
WILSON COUNTY, TENN
VOLUME 241, PAGE 284
SUBJECT.

1. THIS INSTRUMENT IS A DECLARATION OF TRUST, and the parties hereto are the J. SAMPSON AND SONS, BUREN SECURITY FORESTRY, TRACT 1, GRATED 320.26 ACRES, VOLUME 241, PAGE 284, SUBJECT, and the J. SAMPSON AND SONS, BUREN SECURITY FORESTRY, TRACT 3, GRATED 4,000 ACRES, VOLUME 241, PAGE 284, SUBJECT.
2. THE PARTIES HERETO HAVE AGREED TO THE TERMS AND CONDITIONS SET FORTH IN THIS INSTRUMENT, and the same shall be binding upon the parties hereto and their heirs, assigns, and assigns, and shall not be subject to rescission or annulment.
3. THE PARTIES HERETO HAVE AGREED TO THE TERMS AND CONDITIONS SET FORTH IN THIS INSTRUMENT, and the same shall be binding upon the parties hereto and their heirs, assigns, and assigns, and shall not be subject to rescission or annulment.
4. THIS INSTRUMENT IS A DECLARATION OF TRUST, and the parties hereto are the J. SAMPSON AND SONS, BUREN SECURITY FORESTRY, TRACT 1, GRATED 320.26 ACRES, VOLUME 241, PAGE 284, SUBJECT, and the J. SAMPSON AND SONS, BUREN SECURITY FORESTRY, TRACT 3, GRATED 4,000 ACRES, VOLUME 241, PAGE 284, SUBJECT.

WITNESSETH THAT I, THE UNDERSIGNED, HAVE READ THE FOREGOING INSTRUMENT, and I know the contents thereof, and I declare that the same is the free and voluntary act and deed of the parties hereto, and that the same is not subject to rescission or annulment.



DATE: 11/11/11
BY: [Signature]

SECTION 17, PUBLIC LANDS ACT OF 1820 AND ACT OF MARCH 3, 1879, WHICH PROVIDE THAT THE UNITED STATES SHALL HOLD THE LANDS IN THE PUBLIC DOMAIN IN TRUST FOR THE PEOPLE.

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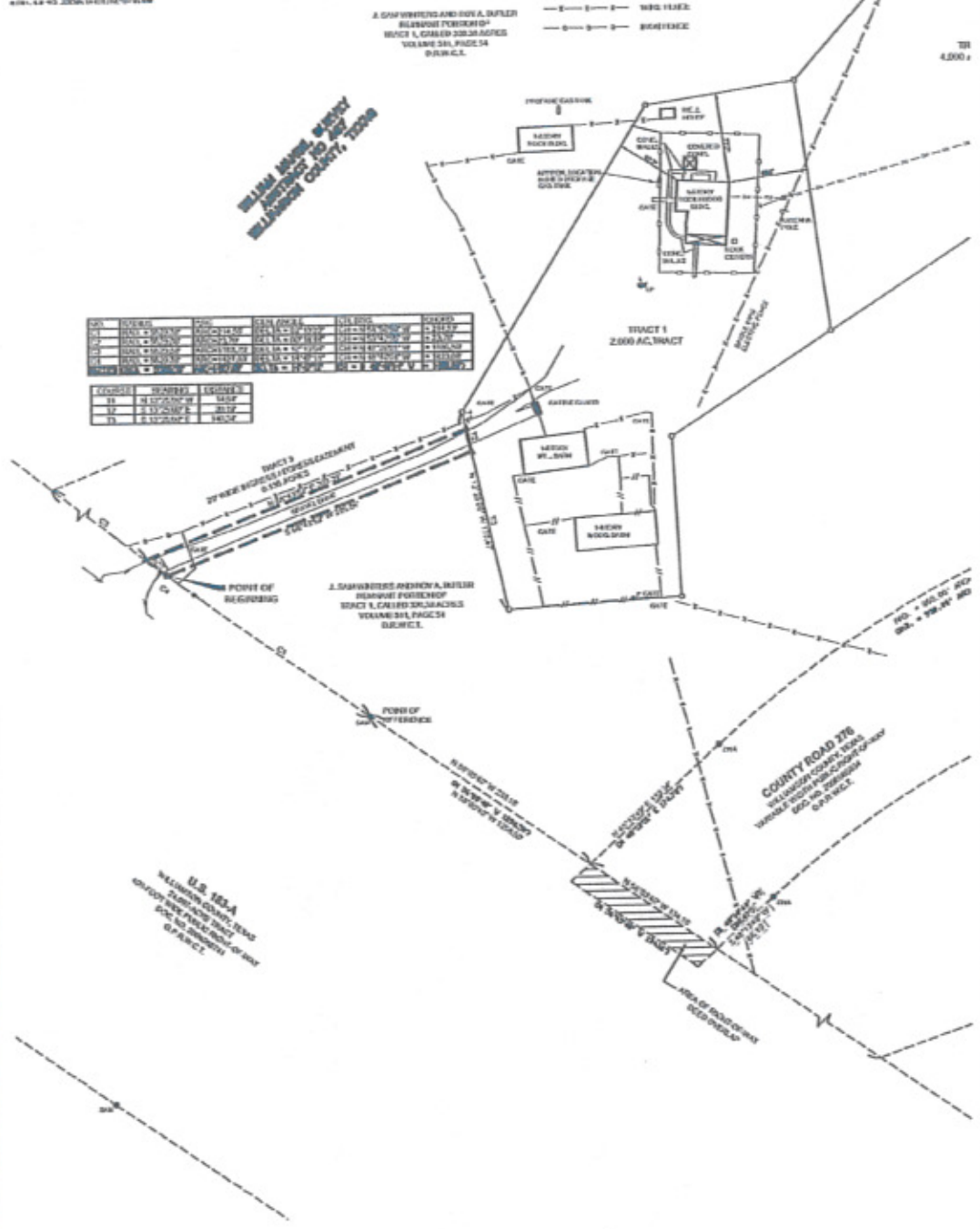
- LEGEND**
- 12" IRON ROD FOUND
 - BOUNDARY CAP FOUND
 - △ AREA WITH "SASSACKED" PINE TREES
 - 12" IRON ROD FOUND
 - BOUNDARY CAP FOUND
 - ▭ UTILITY POLE
 - ▭ LIGHT POLE
 - FENCE
 - WOODEN FENCE
 - IN — OVERHEAD UTILITY LINE
 - — — — — GUY WIRE
 - ○ — ○ — CABLE TIED
 - | — | — WOOD FENCE
 - — — — — WIRE FENCE
 - ○ — ○ — BOUNDARY



**WILLIAM HARRIS, SURVEY
INSTRUMENT NO. 107
WILLIAMSBURG COUNTY, TEXAS**

NO.	ACRES	FRAC.	SECTION	TOWNSHIP	RANGE	COUNTY	STATE
1	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
2	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
3	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
4	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
5	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
6	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
7	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
8	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
9	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX
10	2.000	0/100	36	10N	10E	WILLIAMSBURG	TX

SECTION	TOWNSHIP	RANGE
36	10N	10E
37	10N	10E
38	10N	10E



SKETCH TO ACCOMPANY DESCRIPTION
TRACT 2 - 0.135 AC. TRACT
INGRESS/REGRESS EASEMENT



FIGURE 5

DRAFT FORM
RESERVATION OF PRESERVATION EASEMENT

STATE OF TEXAS

COUNTY OF WILLIAMSON

RESERVATION OF PRESERVATION EASEMENT

This Reservation of Preservation Easement (this "Easement") is executed effective as of the _____ day of _____, 2008 by **J. Sam Winters and Roy Butler** (collectively, the "Grantor"), individuals each residing in Travis County, Texas, for the purposes of reserving a Preservation Easement upon certain real property being conveyed by the Grantor to the Central Texas Regional Mobility Authority, a legal subdivision of the State of Texas ("CTRMA").

Simultaneous with the execution and recording of this Easement, Grantor has conveyed two tracts of real property to the CTRMA, each being portions of the J.C. Bryson Farmstead owned by the Grantor, the entire J.C. Bryson Farmstead being approximately 224.38 acres in size, and located in Leander, Williamson County, Texas (the "J.C. Bryson Farmstead"). The J.C. Bryson Farmstead is more particularly described in that certain Deed of record in Volume _____, Page _____ of the Real Property Records of Williamson County, Texas.

The properties being conveyed and being made subject to this Easement are a two (2) acre tract, more or less, being more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes (the "2 Acre Tract") and a four (4) acre tract, more or less, being more particularly described in Exhibit "B" attached hereto and incorporated herein for all purposes (the "4 Acre Tract"). The 2 Acre Tract and the 4 Acre Tract shall from time to time collectively hereinafter be referred to as the "6 Acre Tract".

Grantor has legal and equitable fee simple title to the 6 Acre Tract as of the execution and recording of this Easement, and has the right and power to reserve this Easement for the benefit of the Grantor, as well as any other beneficiaries specifically provided herein. The conveyance of the 6 Acre Tract to the CTRMA is made subject to this Easement for all purposes and the CTRMA hereinafter has executed this Easement in consideration of Ten and No/100 Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged. The CTRMA acknowledges and agrees that this Easement is and shall be a proper and enforceable easement that shall run with the land for all purposes and shall be enforceable against the CTRMA, its successors and assigns.

As the owner of the remainder of the J.C. Bryson Farmstead, Grantor reserves this Easement for its benefit, and the benefit of its heirs, successors and assigns. Grantor considers portions of the 6 Acre Tract and the improvements thereon to represent a significant example of an historic, architectural, or cultural resource important to the State of Texas.

Further, in consideration of certain benefits and resources provided by the Texas Historical Commission in relation to the 6 Acre Tract, as well as other good and valuable consideration, the

FIGURE 5

DRAFT FORM
RESERVATION OF PRESERVATION EASEMENT

receipt of which is acknowledged by the Grantor, the Grantor does hereby grant, bargain, sell and convey to the Texas Historical Commission, an agency of the State of Texas, and its successors and assigns ("THC"), the non-exclusive benefits of this Easement, including the power and authority to enforce the terms and conditions hereof.

TERMS AND CONDITIONS

1. RESERVATION AND GRANT

In consideration of the benefits and resources provided to the Grantor by THC, Grantor hereby grants and conveys to Grantee an interest and easement in the 6 Acre Tract and reserves the same unto itself, for the preservation of historic, architectural, scenic and open space values, of the nature and character and to the extent set forth in this Easement, to constitute a servitude upon the 6 Acre Tract running with the land, for the benefit of and enforceable by the Grantor and/or THC, to have and to hold the said interest and easement subject to and limited by the provisions of this Easement, to and for perpetuity.

2. SCOPE OF EASEMENT

The easement herein reserved unto the Grantor and herein granted to THC retains and conveys an interest in the 6 Acre Tract consisting of the benefits of the following covenants and undertakings by the CTRMA, its successors and assigns, as owners of the 6 Acre Tract.

(a) upon and after the final subdivision of the 6 Acre Tract, maintenance of any domestic animals shall be prohibited on any portion of the 6 Acre Tract;

(b) the house, cistern and barns located on the 2 Acre Tract, as well as the remainder of the 6 Acre Tract shall be restored and maintained in accordance with applicable United States Secretary of the Interior Standards for Rehabilitation as codified in Section 36 CFR 67 ("SOI Standards") and such SOI Standards shall be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility; and

(c) adequate security and other safeguards shall be instituted and maintained to ensure the 6 Acre Tract remains in its proper condition.

3. RECONFIGURATION

It is anticipated by and among the Grantor, THC, the CTRMA and their respective heirs, successors and assigns, that the boundaries of the 4 Acre Tract may be reconfigured by the Grantor on a date subsequent to the date hereof. It is the intent, and is hereby expressly acknowledged and agreed by all of the parties hereto, that upon any reconfiguration of the 4 Acre Tract, the metes and bounds or lot and block description of the reconfigured 4 Acre Tract shall be substituted for the description included in Exhibit "B" for all purposes and this Easement shall

FIGURE 5

DRAFT FORM
RESERVATION OF PRESERVATION EASEMENT

hereafter apply to such reconfigured description as though originally set forth herein. Any reconfiguration shall be in conformity with the following:

- (a) the boundaries of the 4 Acre Tract may be revised as necessary to address the requirements associated with developing the surrounding property consistent with the City of Leander Transit Oriented Development ordinances, address the location and layout of roads and similar infrastructure related to the development of a portion of the remainder of the J.C. Bryson Farmstead, or address any requirements associated with the development and completion of the 183-A or proposed CR 274 roadways;
- (b) any reconfiguration shall be made in a manner sensitive to preservation of the historic nature of the 6 Acre Tract;
- (c) any reconfiguration of the 4 Acre Tract shall be completed in a manner that the reconfigured 4 Acre Tract continues to encompass at least 4 acres including any property necessary to provide permanent access to a publicly dedicated road, at which time any temporary access easements associated with the 6 Acre Tract shall terminate;
- (d) any reconfiguration of the 4 Acre Tract may include dividing the 4 acres into two or more tracts, so long as each reconfigured tract is contiguous to either the 2 Acre Tract or the remainder of the reconfigured 4 acres, and that permanent access to a publicly dedicated road is made available to the 6 Acre Tract, as reconfigured;
- (e) any reconfiguration of the 4 Acre Tract or associated access easements shall be subject to the approval of a final subdivision plat by the City of Leander; and
- (f) all necessary documentation, conveyances and agreements will be executed by the proper parties and filed, as appropriate, to finalize any reconfiguration completed as provided herein.

4. REMEDIES

Grantor and THC shall have all remedies available to each of them at law or equity. The then current owner of the 6 Acre Tract shall reimburse Grantor and/or THC, as appropriate, for any costs or expenses incurred in connection with enforcing this Easement. The exercise by Grantor and/or THC of one remedy and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

5. ASSIGNMENT, SUCCESSORS AND ASSIGNS

- (a) This Easement shall extend to and be binding upon all persons hereafter claiming by, under or through Grantor, CTRMA or THC, as appropriate, and shall include all such entities or persons whether or not such entities or persons have signed this instrument or had any interest in the 6 Acre Tract at the time it was signed. A person or entity shall

FIGURE 5

DRAFT FORM
RESERVATION OF PRESERVATION EASEMENT

have no obligation pursuant to this Easement, if and when such person shall cease to have any (present, partial, contingent, collateral, or future) interest in the 6 Acre Tract or any interest by reason of a bona fide transfer for value.

(b) THC agrees that it will hold this Easement exclusively for preservation purposes and it will not transfer this Easement for money, other property or services.

6. ACCEPTANCE

THC hereby accepts the right and interest granted to it in this Easement.

7. REVIEWS, APPROVAL AND ENFORCEMENT CLAUSE

The CTRMA and any and all successors in interest further agree to deliver to THC for review and approval the information (including plans, specifications, and designs where appropriate) identifying any proposed permanent changes to the improvements located on the 2 Acre Tract along with 4" x 6" color photographs of the areas to be affected. In connection therewith, a timetable shall be submitted for the proposed activity sufficient to permit THC to monitor such activity. No change or any action subject to the approval of THC shall be taken unless and until receipt of written approval is received from an authorized representative of THC. Whenever such consent or written approval of THC is required, it shall not be unreasonably withheld or delayed. In any event, THC shall respond to any request for consent within thirty (30) days (except under extraordinary circumstances) or such consent shall be deemed to have been given. Proposed changes will conform to the SOI Standards, as administered by the Texas Historical Commission.

8. NO THIRD PARTY BENEFICIARY

Anything to the contrary notwithstanding in this Agreement, all rights, privileges and benefits is for the exclusive use of the parties hereto, and there shall be no third party beneficiary hereof.

9. TERM OF AGREEMENT

This Easement shall become valid on the effective date first above written and remain in effect in perpetuity, unless terminated earlier by agreement of the parties.

10. SEVERABILITY CLAUSE

It is understood and agreed by the parties hereto that if any part, term or provision of this Easement is held to be illegal by the courts, the validity of the remaining portions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Easement did not contain the particular part, term, or provision held to be invalid.

FIGURE 5
DRAFT FORM
RESERVATION OF PRESERVATION EASEMENT

11. INSPECTION CLAUSE

It is agreed Grantor, THC, and their agents and designees shall have the right to inspect the 6 Acre Tract at all reasonable times, with reasonable notice to the owner, in order to ascertain whether or not the conditions of this Easement are being observed.

In witness, this Easement is executed on the _____ day of _____, 2008, to be effective as of the date first above written.

Grantor:

J. Sam Winters

Roy Butler

STATE OF TEXAS:

On this the ____ day of _____, 2008, before me, a Notary Public in and for the State of Texas, J. Sam Winters and Roy Butler known to me (or satisfactorily proven) to be the persons whose names are subscribed to this Reservation of Preservation Easement acknowledged that they executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

FIGURE 5

DRAFT FORM
RESERVATION OF PRESERVATION EASEMENT

Texas Historical Commission

By: _____
F. Lawrence Oaks
Executive Director

STATE OF TEXAS:

On this the ____ day of _____, 2008, before me, a Notary Public in and for the State of Texas, the undersigned officer, personally appeared F. Lawrence Oaks, who acknowledged himself to be Executive Director of the Texas Historical Commission, a state agency organized under the laws of the State of Texas, and that as such Executive Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Texas Historical Commission by himself as Executive Director.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

Central Texas Regional Mobility Authority

By: _____
Mike Heiligenstein
Executive Director

STATE OF TEXAS:

On this the ____ day of _____, 2008, before me, a Notary Public in and for the State of Texas, the undersigned officer, personally appeared Mike Heiligenstein, who acknowledged himself to be Executive Director of the Central Texas Regional Mobility Authority, a subdivision of the State of Texas, and that as such Executive Director, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Central Texas Regional Mobility Authority by himself as Executive Director.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

Original Signature Page to Memorandum of Agreement regarding the J.C.
Bryson Farmstead

INVITED SIGNATORY

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

BY: _____

TITLE: _____

DATE: _____

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

RESOLUTION NO. 11-___

**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:

Approved:

Andrew Martin
General Counsel for the Central
Texas Regional Mobility Authority

Ray A. Wilkerson
Chairman, Board of Directors
Resolution Number: 11-_____
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