



**CENTRAL TEXAS
Regional Mobility Authority**

AGENDA ITEM #5 SUMMARY

Approve a landscape license agreement with Crescent Leander TX, LLC for an entry monument to its development project on 183A.

Strategic Plan Relevance: Regional Mobility

Department: Engineering/Legal

Associated Costs: N/A

Funding Source: N/A

Board Action Required: Yes

Description of Matter: Crescent Leander TX, LLC. has requested authorization to install an entrance monument and related landscaping in public right-of-way at the main entrance to its Bryson Development, located at the US183//183A intersection. The proposed License Agreement, if approved, grants that request on terms substantially identical to the license agreement with the Block House Municipal Utility District for a monument and landscaping at 183A and Scottsdale Road.

Backup material: Draft License Agreement
Draft Resolution

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

LANDSCAPE LICENSE AGREEMENT

THIS LANDSCAPE LICENSE AGREEMENT (this "License") is entered into effective April _____, 2015, by and between **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY**, a political subdivision of the State of Texas operating under Chapter 370 of the Texas Transportation Code ("Authority"), and **CRESCENT LEANDER, TX, LLC**, a Delaware limited liability company ("Developer"), and is as follows:

RECITALS

A. Authority controls and manages public rightofway including and adjacent to the 183/183-A intersection for the Highway 183A Toll Road (the "Public ROW").

B. Developer is the owner of real property known as the "Bryson" development, which is adjacent to the 183/183-A intersection, and desires to undertake certain landscape improvements on the portions of the Public ROW as described and depicted on the attached **Exhibit A** (the "Licensed Property").

C. Developer has requested that Authority grant Developer certain rights and privileges as to the Licensed Property.

NOW, THEREFORE, for and in consideration of the payment by Developer of \$10.00 and in further consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. Grant of License over the Licensed Property. Developer is hereby granted a license over, under, through, and across the Licensed Property for the purpose of constructing, placing, installing, maintaining, operating, inspecting, repairing, relocating, replacing, and removing landscaping, masonry walls, identification signage, irrigation, fencing, lighting, and related landscape and hardscape improvements and making electrical connections thereto, including, without limitation, sidewalk, trees, grass, shrubs, flowering plants, and/or other landscaping (collectively, the "Landscaping Improvements"). Developer will not construct or install any other type of improvements on or within the Licensed Property without the prior written approval of Authority, which approval shall not be unreasonably withheld, conditioned or delayed. Authority will not remove any Landscaping Improvements or other improvements existing on the Licensed Property or any other property of Developer without the prior written consent of Developer. Authority will be obligated to restore or replace any Landscaping Improvements that are removed, damaged, or destroyed as a result of Authority's use of the Licensed Property.

2. Conflicting Rights. Subject to any and all existing (recorded or unrecorded) easements, licenses or other grants existing as of the effective date hereof, Authority covenants that Authority (i) will not use the Licensed Property in any manner that interferes with Developer's use of the Licensed Property under this License and (ii) will not convey any other license, easement, or conflicting rights on, within, or to the Licensed Property that is inconsistent with Developer's use of the Licensed Property under this License. Authority, Developer or any other third party exercising any rights within the Licensed Property will be liable for any and all damages resulting to the Licensed Property and the Landscaping Improvements as a result of their activities and, upon completing such activities, will be responsible for restoring the surface of the Licensed Property, at such party's sole cost and expense.

3. Termination. This License will be perpetual; provided, however, Developer may terminate this License at any time upon 30 days' prior written notice to Authority, and, if use of the Licensed Property by Authority becomes necessary for a substantiated public purpose, Authority may terminate this License upon 30 days' prior written notice to Developer. Upon receipt or submittal of a notice of termination of this License, Developer may remove any Landscape Improvements within the 30 day notice period.

4. Maintenance.

a. Developer will maintain all Landscaping Improvements in a neat and attractive manner and in good operating condition. Developer is not and will not be construed as Authority's agent in contracting for any Landscaping Improvements or other improvements on or to Licensed Property, and will have no authority to pledge, mortgage, hypothecate, or otherwise encumber any interest in Licensed Property or any other property of Authority.

b. Developer will indemnify and hold harmless Authority from and against any and all actions, suits or claims (and all costs and expenses associated therewith) arising out of Developer's actions or inactions regarding the Licensed Property. Developer will not create or permit to be created or remain, and will discharge, at Developer's sole cost and expense, and will indemnify Authority against any and all liens, encumbrances, or charges levied on account of any builder's, supplier's, mechanic's, laborer's, materialmen's, or similar lien which might become a lien, encumbrance, or charge upon Licensed Property, or the income derived therefrom, with respect to any work or services performed or material furnished by or at the direction of Developer. If any such liens, encumbrances, or charges are filed against Licensed Property, by reason of work or services performed or material furnished by or at the direction of Developer, Developer, within 30 days after the filing thereof, will use its reasonable efforts to cause the same to be fully discharged and released of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise.

c. Developer will not park any maintenance vehicles or stockpile any materials on or along Highway 183A. Developer will provide advanced notice to Authority of any large deliveries of materials or maintenance work to the Licensed Property that would materially affect the flow of traffic in the area, and, if, prior to the date any such delivery or work is scheduled to take place, Authority notifies Developer that the delivery or work must be rescheduled, Developer and Authority will agree on a reasonable rescheduling of the delivery or work.

d. Developer is advised that construction of a shared-use-path along Highway 183A is anticipated. Developer will not obstruct the shared-use-path while performing maintenance activities on the Landscaped Property.

5. Assignment. This License and all rights, duties, or obligations hereunder may be assigned by Developer, with the consent of the Authority in its sole discretion, by a written assignment executed by the Authority, the Developer, and the assignee. Any attempt by Developer to make an assignment without such approval will terminate this License and all privileges granted to Developer hereunder. Nothing in this License shall be construed to give any person or entity, other than the parties hereto, any legal or equitable right, remedy, or claim under this License. Authority, without the consent of any other party, will be entitled to transfer or convey all or any portion of Licensed Property to any party provided that such transfer or conveyance is expressly made subject to this License.

6. No Real Property Interest. This License is a grant of the rights specified herein, and shall not be interpreted or construed to convey any rights in real property or rights that run with the land.

7. Entire Agreement. This License constitutes the entire agreement between the parties. This License may be amended only by a writing signed by both parties. No waiver of any right hereunder shall be effective unless in writing.

8. Miscellaneous. This License shall be governed by the laws of the State of Texas. This License is performable and enforceable in Williamson County, Texas. If any provision of this License is held invalid, the remainder of this License shall continue in full force and the invalid provision shall be replaced by one which, being valid, most closely reflects the intention of the parties contained in the invalid provision. Time is of the essence with respect to this License. This License may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Electronic signatures on this License shall be valid and enforceable to the same extent as original signatures.

9. Contacts. All communications shall be submitted to the following:

Authority: Central Texas Regional Mobility Authority
Attention: Wesley M. Burford, P.E.
Director of Engineering
Address: 3300 N. IH-35, Suite 300
Austin, Texas 78705
Phone: (512) 996-9778
Email: wburford@ctrma.org

Developer: Crescent Leander, TX, LLC
Attention: Tommy Tucker
Address: 7000 N. Mopac Expressway, Suite 200
Austin, TX 78731
Phone: 512-514-6920
Email: TTucker@crescentcommunities.com

(Signature page follows)

EXECUTED to be effective as of the date first written above.

AUTHORITY:

**CENTRAL TEXAS REGIONAL MOBILITY
AUTHORITY**

By: _____
Name: Mike Heiligenstein, Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

The instrument was acknowledged before me on _____, 2015, by
_____, _____ of Central Texas Regional
Mobility Authority, on behalf of such entity.

(seal)

Notary Public, State of Texas

DEVELOPER:

CRESCENT LEANDER, TX, LLC, a Delaware limited liability company

By: _____

Name: Thomas G. Tucker

Title: Vice President

THE STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2015, by Thomas G. Tucker, vice president of Crescent Leander, TX, LLC, a Delaware limited liability company, on behalf of such limited liability company.

(seal)

Notary Public Signature

EXHIBIT A
Licensed Property

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

RESOLUTION NO. 15-___

**APPROVING A LANDSCAPE LICENSE AGREEMENT WITH
CRESCENT LEANDER TX, LLC FOR AN ENTRY MONUMENT
TO ITS DEVELOPMENT PROJECT ON 183A.**

WHEREAS, Crescent Leander TX, LLC (“Crescent”) has requested to a license agreement with the Mobility Authority to install and maintain an entrance monument and landscaping in public right-of-way controlled and managed by the Mobility Authority at the main entrance to Crescent’s “Bryson” development at the US183/183A intersection; and

WHEREAS, the Executive Director and Crescent have negotiated a proposed Landscape License Agreement, a copy of which has been provided to the Board as agenda backup information for this resolution.

WHEREAS, the Executive Director recommends approval of the proposed Landscape License Agreement in the form or substantially in the form provided to the Board as agenda backup information.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors hereby approves the proposed Landscape License Agreement; and

BE IT FURTHER RESOLVED that the Landscape License Agreement may be finalized and executed by the Executive Director on behalf of the Mobility Authority in the form or substantially in the form provided to the Board as agenda backup information.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 22nd day of April, 2015.

Submitted and reviewed by:

Approved:

Andrew Martin, General Counsel

Ray A. Wilkerson
Chairman, Board of Directors