

## **FIRST AMENDMENT TO REAL ESTATE CONTRACT**

This is a First Amendment (this "Amendment") to that certain Real Estate Contract ("Contract") effective as of \_\_\_\_\_, between **ROY A. BUTLER** and **J. SAM WINTERS** ("Donors") and **COUNTY OF WILLIAMSON** ("Grantee"). Capitalized terms used in this Amendment and not otherwise defined, have the meanings ascribed to them in the Contract.

### **BACKGROUND**

a. The Contract was for the primary purpose of providing for the Donors to donate property for right-of-way for (i) CR 274, a/k/a San Gabriel Parkway (but referred to in the Contract as CR 276), and (ii) US 183A. Donors have conveyed such right-of-way to Grantee, subject to rights of reverter contained in the deeds. The term "Property" as used in this Amendment means the surface estate to the following tracts of land:

(i) A tract containing 0.339 acres, more or less, and a tract containing 3.733 acres, more or less, described in a deed from Donors to Grantee dated on or about August 30, 2004 and of record under Document No. 2004068740 in the Official Public Records of Williamson County, Texas. These tracts were for the First Phase of the realignment of CR 274.

(ii) A tract containing 2.124 acres, more or less, and a tract containing 18.345 acres, more or less, described in a deed from Donors to Grantee dated on or about July 24, 2006 and of record under Document No. 2006066934 of the Official Public Records of Williamson County, Texas. These tracts were for the Second Phase of the realignment of CR 274

b. After the conveyances were completed, it was discovered that certain of Donors' property contained a Recorded Texas Historic Landmark known as the J. C. Bryson Farmstead, which resulted in delays causing the reversion of the title to the right-of-way to the Donors.

c. The issues resulting from such Recorded Texas Historic Landmark have now been resolved by the execution of a Memorandum of Agreement ("MOA") among the Donors, Federal Highway Administration, Advisory Council on Historic Preservation, and Texas State Historic Preservation Officer. Therefore, Donors and Grantee desire to

amend the Contract to, among other things, extend certain deadlines and reverse the reversion of title.

Therefore, in consideration of the foregoing and the mutual covenants contained in this Amendment, it is agreed as follows:

1. The Lessee named in Article IV(1) is now Kent Talley.
2. The conditions to Grantee's obligations contained in Article III have been satisfied, and Grantee has accepted a conveyance of the Property. The closing contemplated by Article V has occurred in accordance with the Contract, and the provisions of Articles V, VI, VII and VIII are now moot. In addition, Donors have executed a deed of record in Document No. 2004068741 of the Official Public Records of Williamson County, Texas conveying 24.6972 acres to Grantee for the purpose of construction of US 183A (the "183A Property"). Only an access road for US 183A has been constructed on the 183A Property. The conditions specified in Paragraph 2(a)(i) and (ii) under the Reservations and Exceptions in that deed have occurred, and title to the 183A Property has reverted to the Donors.

3. Section 9.01 of the Contract is revised to read as follows:

"9.01 The dedication of the Property is contingent upon the following conditions: (i) construction of a two lane, curbed and guttered road that meets or exceeds the minimum standards required by Williamson County for acceptance of roads for county maintenance upon, across and through the Property as a portion of the proposed realignment of SAN GABRIEL PARKWAY; and (ii) the approval by the Williamson County voters of a road bond package for the funding of road construction projects which will prioritize SAN GABRIEL PARKWAY no later than December 31, 2012. Such road bond package shall be included in the next road bond election predicted to be held in 2011 or 2012. Nothing herein restricts Grantee from funding such roadway from other sources. It is anticipated that the construction of the proposed realignment of SAN GABRIEL PARKWAY shall be in phases:

"(a) The First Phase of such realignment shall be upon, across and through the Property to extend from the western boundary of the Property, which is also the eastern boundary of US 183, to the western boundary of US 183A. Only a portion of the First Phase of CR 274 has been completed. Grantee intends to enter into an Interlocal

Agreement (the "ILA") with the Central Texas Regional Mobility Authority (the "CTRMA") for the construction of the remainder of the First Phase of said realignment. The ILA shall require the CTRMA to complete construction of the remainder of the First Phase within two (2) years after the signing of the ILA. If a contract for the expeditious construction of the remainder of the First Phase of the proposed realignment of SAN GABRIEL PARKWAY is not awarded before two (2) years after the date of this Amendment (the "First Phase Deadline"), title to the Property (except for that portion of the Property under the completed portion of the First Phase) will automatically revert to Donors, their heirs or assigns, and without the necessity of re-entry or suit, and without further act or deed on the part of Donors or Grantee. The parties will execute and deliver a recordable amendment to the deed conveying the Property to the Grantee that memorializes, for the record, the extension of the time within which Grantee must execute such contract.

"(b) The Second Phase of such realignment will extend from the eastern boundary of US 183A to CR 270. If a road bond package for funding of the Second Phase has not been passed by December 31, 2012 , and the Second Phase does not receive first priority for funding and construction among the road bond package which is approved, or if a contract for the expeditious construction of the Second Phase of the proposed realignment of SAN GABRIEL PARKWAY is not awarded before December 31, 2012 (the "Second Phase Deadline") , title to that portion of the Property within the Second Phase will automatically revert to Donors, their heirs or assigns, without the necessity of re-entry or suit, and without further act or deed on the part of Donors or Grantee. The parties will execute and deliver a recordable amendment to the deed conveying the Property to the Grantee that memorializes, for the record, such extension of the time.

"(c) The definitions of "First Phase" and "Second Phase" in this Amendment are different from those in the original Contract, and the definitions in this Amendment are controlling."

4. Section 9.04 of the Contract is amended to read as follows:

"9.04

(a) The reversion of the 183A Property is rescinded and the conveyance reinstated, but , if either or both of the First Phase Deadline or the Second Phase Deadline are not met, then title to the 183A Property will automatically revert to Donors, their heirs or assigns without further act or deed on the part of Donors or Grantee. The parties will execute and deliver a recordable amendment to the deed conveying the Property to the Grantee that memorializes, for the record, this extension of the time.

(b) The completion of the First and Second Phase of CR 274 prior to the First Phase Deadline and the Second Phase Deadline resolve Donors' claims that the construction of US 183A damages the value of remainder of Donors' land. Therefore, if either or both of the First Phase Deadline and the Second Phase Deadline are not met, then the Donors will have a claim of inverse condemnation against Grantee for the fair market value of the 183A Property and the damage to the value of the remainder of Donors' land caused by 183A, as of the date of this Amendment. Grantee does not agree that Donors remainder is damaged, but agrees that Donors have the right to make that claim in a court of competent jurisdiction. Moreover, Grantee agrees that any applicable statutes of limitation that apply to Donors claims based on inverse condemnation are tolled and will not begin to run until the earlier of (i) the date the First Phase Deadline is not met, or (ii) the date the Second Phase Deadline is not met, if the First Phase Deadline has been previously met.

(c) If CR 274 is completed within the times set forth herein, Donors, their successors and assigns, in their sole discretion shall have the right and privilege to make driveway cuts onto the frontage roads of US 183A, subject to appropriate laws and regulations of the State of Texas and the CTRMA and any valid rules and regulations adopted pursuant thereto, and onto CR 274 from Donors land lying contiguous to such roadway pursuant to Williamson County subdivision regulations.

5. Sections 9.05, 9.06, and 9.07 of the Contract are deleted.

6. The Contract is amended by adding a new Section 9.10, to read as follows:

(a) The construction of CR 274 will divide what is now a single pasture on each side of 183A into two pastures, rendering it impossible for cattle and other domestic

animals grazing on the south side of CR 274 to reach available drinking water on the north side of CR 274. Therefore, Grantee agrees that during the construction of CR 274, it will install:

(i) an appropriate water pipeline across the right of way of 274 lying west of 183A that will connect with the existing water pipeline (approximately 1" in diameter) in existence and lying north of CR 274; and

(ii) an appropriate water pipeline across the right of way of 274 lying east of 183A that will connect with the existing water pipeline (approximately 1" in diameter) in existence and lying north of CR 274.

The location of the pipelines will be selected by Donors, subject to the approval of Grantee, which approval may not be unreasonably withheld.

(b) Grantee will also grant Donors written easements to permit Donors to maintain and use such pipelines in perpetuity. Such easements will be appurtenant to Donors' adjoining property and will be covenants running with the land. The parties agree to provide reasonable cooperation to each other in order that such pipelines may be installed and the easements granted. Both parties shall execute and deliver such documents as are reasonable and necessary to accomplish the purpose of this provision. The documents will be subject to the approval of both parties, which approval may not be unreasonably withheld, conditioned or delayed.

(c) Grantee is solely responsible for all of the costs and expenses of complying with the foregoing obligations.

7. All references in the Contract to "CR 276" are amended to read "San Gabriel Parkway," or "CR 274", and the parties shall execute and file amendments to the deeds heretofore given by Donors making the same change.

8. Except as amended by this Amendment, the Contract is unchanged. The parties ratify the Contract, as amended by this Amendment. Subsequent references to the Contract will include the Contract, as amended by this Amendment.

9. The effective date of this Amendment is the date when it is approved by the Commissioners' Court of Williamson County, Texas.

DONORS

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Roy A. Butler

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J. Sam Winters

GRANTEE:

COUNTY OF WILLIAMSON

By: \_\_\_\_\_