



CENTRAL TEXAS Regional Mobility Authority

AGENDA ITEM #12 SUMMARY

Authorize the Executive Director to execute a development agreement with Pecan Grove - SPVF L.P. and to advertise for bids to construct a right-turn lane on the 183A frontage road.

Strategic Plan Relevance: Regional Mobility

Department: Engineering

Associated Costs: TBD

Funding Source: General Funds

Board Action Required: Yes

Description of Matter:

Pecan Grove - SPVF L.P. ("Developer") needs a 12-ft wide right-turn lane approximately 1800-ft in length along the 183A northbound frontage road to serve its proposed development east of 183A at Scottsdale Drive. The Mobility Authority and Developer have agreed on a proposed development agreement by which the Mobility Authority will bid out, manage the construction , and inspect the required work based on agreed-upon project plans. The Developer will escrow the agreed-upon estimated construction costs, plus a 15% contingency reserve and fees the Mobility Authority will incur to have HNTB, our general engineering consultant, oversee and inspect the contractor's work (estimated at 10% of the construction cost). Developer's escrowed funds establish their maximum cost: any cost that exceeds the escrowed funds will be paid by the Mobility Authority, and any escrowed funds remaining after completion and acceptance of the right-turn lane will be refunded to the Developer.

The Developer will also post a \$100,000 letter of credit to secure payment of a 50% contribution towards the Mobility Authority's future cost of designing and installing an electronic traffic signal at the intersection of Scottsdale Drive and

the northbound 183A frontage road. If the final cost of providing the traffic signal is less than \$200,000, the Mobility Authority will refund to the Developer the funds that exceed 50% of that final cost.

Reference documentation:

Draft Resolution
Draft Development Agreement

Contact for further information:

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

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

RESOLUTION NO. 13-____

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A DEVELOPMENT
AGREEMENT WITH PECAN GROVE – SPVF L.P. AND TO ADVERTISE FOR BIDS
TO CONSTRUCT A RIGHT-TURN LANE ON THE 183A FRONTAGE ROAD.**

WHEREAS, Pecan Grove – SPVF L.P. (the “Developer”) is developing property abutting the northbound 183A frontage road at and near its intersection with Scottsdale Drive; and

WHEREAS, to provide safe and sufficient access to the development and travelers on the 183A frontage roads, the Developer and the Mobility Authority have negotiated a development agreement to provide a right-turn lane for the northbound 183A frontage road to provide safer access to driveways and streets serving development, and a future traffic signal to be installed at the intersection of that frontage road and Scottsdale Drive; and

WHEREAS, the Executive Director recommends approval of the proposed development agreement attached to this resolution as Exhibit 1.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves the proposed development agreement and authorizes the Executive Director to execute the development agreement with Pecan Grove – SPVF L.P. in the form or substantially in the form attached to this resolution as Exhibit 1; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized to advertise for bids to construct the proposed right-turn lane in accordance with terms of the development agreement and the Mobility Authority’s procurement policies.

Adopted by the Board of Directors of the Central Texas Regional Mobility Authority on the 27th day of February, 2013.

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: 13-_____
Date Passed: 2/27/13

EXHIBIT 1 TO RESOLUTION NO. 13-

PROPOSED DEVELOPMENT AGREEMENT

[on the next 19 pages]

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is effective January ____, 2013, and is between the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“Mobility Authority”) and PECAN GROVE SPVEF, LTD., a Delaware limited partnership (“Developer”). The Mobility Authority and Developer may be referred to collectively in this Agreement as the “Parties,” and individually as a “Party.”

WHEREAS, the Mobility Authority recently completed its construction of the 183A Phase II Turnpike Project, from RM 1431 to a point north of the intersection of 183A and Hero Way (“183A”); and

WHEREAS, Developer is the owner of certain real property in the City of Cedar Park, Texas, that abuts the northbound frontage roads for 183A, consisting of Tract 1 (17.62 acres), Tract 2A (111.08 acres), and Tract 2B (1.21 acres) (collectively, the “Properties”), as more fully described in **Exhibit 1** attached to this Agreement.

WHEREAS, to facilitate traffic management for the benefit of both the public and for the users and occupants of the Properties after the Properties are developed, Developer has proposed construction of a new right turn lane in the northbound 183A frontage road abutting and serving the Properties, starting at a point located approximately 1,960 feet south of Scottsdale Drive, continuing north to and within the intersection of the northbound 183A frontage road with Scottsdale Drive (the “Roadway Project”), and

WHEREAS, the Developer and the Mobility Authority anticipate the need to design and install an electronic traffic signal at the intersection of the northbound 183A frontage road and Scottsdale Drive (the “Traffic Signal Project”) in the future as warranted; and

WHEREAS, this Agreement establishes the Parties respective obligations with respect to the Roadway Project and the Traffic Signal Project.

NOW THEREFORE, the Mobility Authority and Developer hereby agree as follows:

A. ROADWAY PROJECT

1. The Roadway Project is further defined as construction of a 12-ft wide right turn lane, curbed and guttered, together with all required and related construction and drainage improvements, as generally illustrated by **Exhibit 2** to this Agreement.
2. Developer shall provide on the Properties all temporary and permanent easements to provide all drainage and water quality infrastructure required to construct the Roadway Project and to develop the Properties, so that no temporary or permanent drainage or water quality infrastructure facility will be located on Mobility Authority right-of-way.
3. Developer has prepared and provided to the Mobility Authority the design and construction documents required for the Roadway Project, including plans in accordance to TxDOT

Standards and Specifications; a Construction Manual that includes all documents, specifications, special provisions, special specifications and general notes required by the Mobility Authority; a Construction Schedule; native CADD files used in the development of the construction documents; an electronic file in PDF format for each document provided under this paragraph; and any other documents identified by the Mobility Authority as necessary to construct the Roadway Project (the “Project Plans”). Based on the Project Plans, the Developer has provided the Engineer’s Cost Estimate set forth in **Exhibit 3**. The Mobility Authority has reviewed and approved the Project Plans and the Engineer’s Cost.

4. No later than five days after the effective date of this Agreement, Developer shall pay the full amount of the Engineer’s Cost Estimate established by **Exhibit 3** into an escrow account established in accordance with and subject to the Escrow Agreement attached as **Exhibit 4** to this Agreement (the “Escrow Agreement”).
5. The Mobility Authority shall procure and supervise the construction contract for the Roadway Project in accordance with the Mobility Authority’s Procurement Policies established by the Mobility Authority Policy Code. The Mobility Authority shall initiate the procurement process required to hire a contractor to build the Roadway Project no later than 30 days after:
 - a. the Escrow Agreement has been executed by the Mobility Authority, the Developer, and the escrow agent identified in that agreement (the “Escrow Agent”), and a duly-executed counterpart original of that escrow agreement has been delivered to the Escrow Agent; and
 - b. Developer has deposited funds equal to the Engineer’s Cost Estimate with the Escrow Agent to be held in escrow under the Escrow Agreement.
6. Developer shall pay all costs incurred by the Mobility Authority for the procurement, construction, and construction oversight of the Roadway Project (the “Actual Cost”), in an amount not to exceed the Engineer’s Cost Estimate approved by the Mobility Authority and deposited into escrow. The Mobility Authority may draw upon the funds deposited by Developer into the escrow account in accordance with the terms and conditions of the Escrow Agreement. After completion and acceptance of the Roadway Project by the Mobility Authority and after the Mobility Authority has established and paid the Actual Cost, any funds remaining in the escrow account, including any accrued interest, shall be returned to Developer.

B. THE TRAFFIC SIGNAL PROJECT

1. The Traffic Signal Project is further defined as the design, construction, and installation of an electronic traffic signal to include mast arms, foundations, signal heads, pedestrian heads, appropriate signage, conduits, and wiring needed to provide a fully functional traffic signal at the intersection of Scottsdale Drive and the northbound 183A frontage road.

2. Developer agrees to pay \$100,000.00 to the Mobility Authority as a contribution towards the cost of the Traffic Signal Project (the “Signal Light Contribution”). The Signal Light Contribution shall be paid to the Mobility Authority no later than the earliest of the following dates:
 - a. the date an application is filed with the City of Cedar Park for the initial city permit required to construct the first building to be built in Phase II of the Scottsdale Development, as that Phase II is identified in **Exhibit 5** to this Agreement; or
 - b. the payment date established no earlier than thirty days after notice to the Developer by the Mobility Authority that states the Mobility Authority’s determination that the Traffic Signal Project is warranted based on then-current traffic conditions; or
 - c. February 5, 2015.
3. No later than ten days after the effective date of this Agreement, Developer shall deliver to the Mobility Authority and continuously maintain until February 28, 2015, or its payment of the Signal Light Contribution, whichever comes first, a letter of credit in the amount of \$100,000.00 payable to the Mobility Authority to assure payment of the Signal Light Contribution. Any letter of credit provided under this paragraph shall be from an issuer acceptable to the Mobility Authority and in a form acceptable to the Mobility Authority. The Mobility Authority may draw upon any letter of credit provided under this paragraph upon the occurrence of the earlier of the following events:
 - a. The Developer has not renewed or replaced the letter of credit at least 45 days before the expiration date of the letter of credit; or
 - b. The Developer has failed to timely pay the Signal Light Contribution due under paragraph B(2).

The Mobility Authority may draw on the letter of credit by submitting a draft to its issuer that complies with the terms governing the draft and this paragraph 3. The Mobility Authority shall send a copy of the draft to the Developer contemporaneously with submitting the draw to the issuer.

4. The Mobility Authority shall pay all costs for the Traffic Signal Project and shall apply the Developer’s Traffic Signal Contribution towards those costs. The Mobility Authority will begin the Traffic Signal Project no later than 90 days after the date it receives the Traffic Signal Contribution under paragraph B(2) or B(3) of this Agreement and shall proceed diligently to complete the Traffic Signal Project. If the actual cost of the completed Traffic Signal Project is less than the Traffic Signal Contribution paid by Developer, the Mobility Authority shall return the unspent portion of the Traffic Signal Contribution to Developer no later than 30 days after the Traffic Signal Project is completed and finally accepted by the Mobility Authority.

C. DEFAULT; REMEDIES; TERMINATION

1. Either Party may terminate this Agreement if the other Party defaults in its obligation and, after receiving notice of the default and of the non-defaulting Party's intent to terminate, fails to cure the default no later than ten days after receipt of that notice.
2. This Agreement will terminate when the Roadway Project and the Traffic Signal Project have both been completed and accepted by the Mobility Authority, or on May 1, 2015, whichever date is earlier.

D. MISCELLANEOUS PROVISIONS

1. Actions Performable; Venue. The Mobility Authority and the Developer agree that all actions to be performed under this Agreement are performable in Williamson County, Texas. The parties agree that the exclusive venue for any lawsuit arising out of or relating to this Agreement will be in Williamson County, Texas, and waive the right to sue or be sued elsewhere.
2. Governing Law. The Mobility Authority and Developer agree that this Agreement has been made under the laws of the State of Texas in effect on this date, and that any interpretation of this Agreement at a future date shall be made under the laws of the State of Texas.
3. Complete Agreement; Amendment. This Agreement represents the entire agreement between the parties regarding the Roadway Project and the Traffic Signal Project, and supersedes all oral statements and prior writings relating to this Agreement. This Agreement may not be amended except by an instrument in writing signed by Developer and the Mobility Authority.
4. Exhibits. All exhibits and attachments attached hereto are incorporated herein by this reference.

Exhibit 1	-	Description of the Properties
Exhibit 2	-	Roadway Project Illustration
Exhibit 3	-	Engineer's Cost Estimate
Exhibit 4	-	Escrow Agreement
Exhibit 5	-	Phase II of the Scottsdale Development

5. Notice. All notices, demands or other requests, and other communications required or permitted under this Agreement 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 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:

For the Mobility Authority:

Mike Heiligenstein, Executive Director
Central Texas Regional Mobility Authority
301 Congress Avenue, Suite 650
Austin, TX 78701
(512) 996-9784 (facsimile)

For the Developer:

PECAN GROVE-SPVEF, L.P.
c/o Dennis R McDaniel
906 Crystal Creek Drive
Austin, TX 78746
(512) ???-???? (facsimile)

6. Force Majeure. Whenever a period of time is prescribed by this Agreement for action to be taken by either Party, the Party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.
7. Assignment. This Agreement may be assigned by the Developer. The Developer must deliver to the Mobility Authority a written acknowledgement from the entity being assigned the Developer's position in this Agreement, acknowledging this Agreement and committing to assume all of the Developer's obligations included in this Agreement. No assignment of this Agreement shall release Developer from its obligations under this Agreement, but rather Developer and its assignee shall be jointly and severally liable for those obligations.
8. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the Mobility Authority and Developer, respectively.

[signatures on following page]

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____
Mike Heiligenstein, Executive Director

PECAN GROVE SPVEF, LTD.

By: _____
Printed Name: _____

Exhibit 1 - Description of the Properties

[to be provided]

Exhibit 2 - Roadway Project Illustration

[to be provided]

Exhibit 3 - Engineer's Cost Estimate

[to be provided]

Exhibit 4 - Escrow Agreement

[on the following eight pages]

Exhibit 5 - Phase II of the Scottsdale Development

[to be provided]

ESCROW AGREEMENT

This Escrow Agreement (“Agreement”) is dated January ____, 2013, and is between PECAN GROVE SPVEF, LTD., a Delaware limited partnership (“Developer”), the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“Mobility Authority”), a Texas political subdivision, and HERITAGE TITLE COMPANY OF AUSTIN, INC. (“Heritage Title”), as the Escrow Agent. The Developer, Mobility Authority, and Heritage Title may be referred to collectively in this Agreement as the “Parties,” and individually as a “Party.”

RECITALS

WHEREAS, the Developer and the Mobility Authority have entered into a Development Agreement effective January ____, 2013 (the “Development Agreement”) to fund certain roadway and related improvements described in that agreement (the “Roadway Project”); and

WHEREAS, Developer has agreed in the Development Agreement to place \$_____ in an escrow account as a source of funds to be used by the Mobility Authority to build the Roadway Project; and

WHEREAS, Heritage Title has agreed to serve as the escrow agent for Developer and the Mobility Authority in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for Parties agree as follows:

1. **Incorporation of Recitals and Findings.** The Recitals above are a part of this agreement. Capitalized words and phrases that are not defined in this Escrow Agreement have the meaning given in the Development Agreement.
2. **Appointment of Escrow Agent.** Developer and the Mobility Authority hereby 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.** No later than five business days after all Parties have signed this Agreement, Developer shall deliver one duly-executed counterpart original of this Escrow Agreement to Escrow Agent.
4. **Deposit of Escrowed Funds.** Concurrently with the delivery of the duly-executed counterpart original of this Escrow Agreement to Escrow Agent, Developer shall deposit with Escrow Agent the sum of \$_____ (the “Escrowed Funds”). Escrow Agent shall not be responsible for the collection of the Escrowed Funds and may fully rely on Developer 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 Developer and insured by the FDIC. 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.

5. **Escrow Term.** The Escrow shall close when all of the Escrowed Funds are disbursed in accordance with Paragraphs 6 and 9 below, as applicable.

6. **Disbursement of Escrowed Funds to Mobility Authority.** Escrow Agent is instructed to disburse payments from the Escrowed Funds to the Mobility Authority in accordance with the following procedures:

- (a) Mobility Authority will submit a draw request to the Escrow Agent stating and representing as true and correct the payment or payments made by the Mobility Authority to outside contractors to provide services relating to bidding and oversight of the construction contract and to pay the contract price for construction of the Roadway Project to the bidder selected for the contract. A true and correct copy of each draw request submitted to the Escrow Agent shall be submitted contemporaneously by the Mobility Authority to the Developer using the same method of notice the Mobility Authority uses under Paragraph 13(c) to submit the draw request to the Escrow Agent.
- (b) Within two business days after the date Escrow Agent receives a draw request, Escrow Agent shall disburse the Draw Amount to the Mobility Authority.
- (c) The draw request shall be completed using the form attached as Exhibit 1.
- (d) The Escrow Agent shall pay each completed draw request forwarded by the Mobility Authority to Escrow Agent. The draw request shall be paid in the dollar amount actually submitted in writing by the Mobility Authority, if sufficient Escrowed Funds are available.

7. **Documentation and Audit of Draw Requests.**

- (a) The Mobility Authority shall keep and maintain records to document and support that each individual draw request paid to the Mobility Authority has been used only for one or more of the authorized purposes established by Section 6(a) of this Agreement. Records maintained under this subsection shall be made available for review and copying by the Developer upon Developer's written request.
- (b) All of the Mobility Authority's expenditures under this Agreement shall be subject to audit by the Developer, at Developer's request and sole expense.

8. **Disbursement of Remaining Escrowed Funds.** Escrow Agent shall disburse to the Developer any funds that remain in the Escrow Account no later than ten days after receipt of notice from the Mobility Authority to Escrow Agent and to the Developer that the Roadway Project has been completed and accepted by the Mobility Authority, and that after all funds eligible for disbursement to the Mobility Authority under Section 6(a) have been disbursed to the Mobility Authority.

9. **Resignation of Escrow Agent.** Escrow Agent reserves the right to resign hereunder, upon 20 days prior written notice to the Mobility Authority and Developer. In the event of said resignation, and prior to the effective date thereof, either (a) the Mobility Authority and the Developer, 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 Mobility Authority and the Developer 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 Developer and the Mobility Authority (subject to appropriations and to the extent permitted by law) jointly and severally 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 Developer and the Mobility Authority shall have no such obligation to indemnify Escrow Agent for its own willful misconduct or gross negligence.

12. **Escrow Fee.** For its ordinary services hereunder, Escrow Agent shall be entitled to a fee of \$75.00 per draw, to be withdrawn from the Escrowed Funds and paid to Escrow Agent simultaneously with each draw disbursement. 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 Mobility Authority and Developer shall, jointly and severally, reasonably compensate Escrow Agent therefore 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.

13. **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 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 or electronic mail transmission (the latter of scanned documents in formats such as .pdf or .tif) for which confirmation of receipt by the other parties has been obtained by the sending Party:

Escrow Agent:

Heritage Title Company of Austin
Attn: Nancy Grasshoff
401 Congress Avenue, Suite 1500
Austin, Texas 78701
(512) 505-5000
(512) 505-5024 (facsimile)
Email: ngrasshoff@heritage-title.com

Developer:

PECAN GROVE-SPVEF, L.P.
c/o Dennis R McDaniel
906 Crystal Creek Drive
Austin, TX 78746
(512) ???-????
(512) ???-???? (facsimile)
Email: ????@???

Mobility Authority: Central Texas Regional Mobility Authority
Attn: Wes Burford, Director of Engineering
301 Congress Avenue, Suite 650
Austin, Texas 78701
(512) 996-9778
(512) 996-9784 (facsimile)
Email: wburford@ctrma.org

- 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 and construed in accordance with 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.

14. **Conflict with Development Agreement.** In the event of a conflict between any term, provision or condition of the Development Agreement and this Escrow Agreement, the terms, conditions and provisions of the Development Agreement shall govern with respect to Developer and Mobility Authority. Escrow Agent shall be bound by only the terms and stipulations of this Escrow Agreement.

15. **Effective Date.** The Effective Date shall be the date the last of the Parties shown below executes this Escrow Agreement.

16. **Term.** This Escrow Agreement shall terminate when all Escrowed Funds have been disbursed in accordance with the terms hereof.

IN WITNESS WHEREOF, the Mobility Authority, Developer, and Escrow Agent have executed this Escrow Agreement to be effective as of the Effective Date.

MOBILITY AUTHORITY: Central Texas Regional Mobility Authority

By: _____
Name: Mike Heiligenstein
Title: Executive Director
Date: _____

DEVELOPER: PECAN GROVE SPVEF, LTD.

By: _____
Name: _____
Title: _____
Date: _____

ESCROW AGENT: Heritage Title Company of Austin, Inc.

By: _____
Name: Nancy Grasshoff
Title: _____
Date: _____

EXHIBIT 2

DRAW REQUEST

Date: _____

Heritage Title Company of Austin, Inc.
401 Congress Avenue, Suite 1500
Austin, TX 78701

Re: Escrow Agreement by and between PECAN GROVE SPVEF, LTD., a Delaware limited partnership (“Developer”), the CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY (“Mobility Authority”), a Texas political subdivision, and HERITAGE TITLE COMPANY OF AUSTIN, INC. (“Heritage Title”), as the 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: _____, 2013.

\$_____ Amount Remaining in Escrow following Current Draw.

The undersigned certifies that these funds are requested exclusively for the purpose of:

1. Reimbursement of costs paid by the Mobility Authority to HNTB Corporation, its General Engineering Consultant, for services relating to procurement and oversight of the construction contract.
2. Reimbursement of costs paid by the Mobility Authority to _____, its _____, for services relating to procurement and oversight of the construction contract.
3. Reimbursement of costs paid by the Mobility Authority to _____, the general contractor selected by the Mobility Authority, for costs and charges incurred under the contract to construct the Roadway Project.

The undersigned further certifies that:

1. all work described by this draw request has been undertaken in compliance with applicable local, state, and federal laws and regulations; and
3. the Mobility Authority has provided a true and correct copy of this draw request to Developer 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 Mobility Authority to document the expenses included in this draw request.

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

cc: PECAN GROVE SPVEF, LTD.

Attn: Dennis R. McDaniel

906 Crystal Creek Drive

Austin, TX 78746