SPITZER & ASSOCIATES

Real Estate Solutions

September 7, 2017

Burnet County
Attn: Judge James Oakley
220 S. Pierce St.
Burnet, TX 78611

Dear Judge Oakley:

The State is offering you additional compensation in the amount of $3,000.00, if you are willing to enter into the attached **Possession and Use Agreement.** Your acceptance of the additional compensation for agreeing to the **Possession and Use Agreement** does not require you to accept the State's offer of compensation for your property rights. This additional compensation is over and above the purchase price that will be paid for the property in exchange for the State's ability to start constructing the project while an agreement on the purchase price to the property is reached.

While the details are more fully set out within the attached agreement, once you have signed **Possession and Use Agreement,** the State will be entitled to possession of the Property referenced in the State's offer. Acceptance of the additional compensation and agreeing to the terms of the **Possession and Use Agreement** shall in no way limit your right to seek what you believe to be adequate compensation as allowed by law for all of your interests in and to the Property to be acquired by the State of Texas, and damages, if any, to any remainder property, as the Property exists on the effective date of the **Possession and Use Agreement.**

The dollar amount of the **Possession and Use Agreement,** unless there are title issues associated with the property, will be for the approved amount of the State's offer to purchase the property plus additional compensation for agreeing to sign the **Possession and Use Agreement.** The additional compensation has been calculated as 10% of the State's approved offer; however the amount offered to any property owner shall not be less than a minimum amount of $3,000.00 and a maximum amount of $25,000.00. As part of the **Possession and Use Agreement,** you will guaranty that title to the Property is free and clear of all liens and encumbrances, or that necessary and proper releases will be executed for the Property prior to funds being disbursed. In the event clear title to the Property cannot be secured before the date the additional consideration is to be paid, you may still be eligible to sign the **Possession and Use Agreement** for the additional compensation. In that situation, the additional compensation will be the amount in the **Possession and Use Agreement** with the full amount of compensation for your property being presented to you once title to the property has been cleared and is ready for transfer to the State.

P.O. Box 303159
Austin, Texas 78703

Office (512) 478-8660
Fax (512) 478-8462

Understand that agreeing to the attached **Possession and Use Agreement,** and accepting the additional compensation being offered, in no way limits your constitutional right to contest the State's approved value. In the event any final judgement is for an amount less than the approved amount paid by the State, which would result in a partial refund to the State, your additional compensation is not subject to refund. Additionally, any additional compensation amount paid to you will not be required to be accounted for when claiming any relocation benefits you may be entitled to. Please review the attached Possession and Use Agreement, and notify Candy Spitzer, Spitzer and Associates, Inc., at (512) 633-7349 or candy@spitzerassociates.com if you are interested in signing and receiving the additional compensation for your property.

Sincerely,

Candy Spitzer

Candy Spitzer, R/W-RAC
Spitzer & Associates, Inc.

Enclosures

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION

STATE OF TEXAS	§	ROW CSJ: 0252-02-055
	§	Parcel No.: 4
COUNTY OF BURNET	§	Project No.: STP 1702(813)

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between the State of Texas, acting by and through the Texas Department of Transportation (the "State") , and Burnet County (the "Grantor" whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a portion of Highway No. 281 (the "Highway Construction Project"). The property subject to this Agreement is described more fully in field notes and plat map (attached as "Exhibit A") and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the State which is set forth in Paragraphs 2 and 3 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Possession and Use Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.

2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of Zero and No/100 Dollars ($0.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The State will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents 0% percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the State in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the State, the Grantor will promptly refund the overpayment to the State.

3. As additional consideration, the State will tender to the Grantor the sum of Three Thousand and No/100 Dollars ($3,000.00), the receipt and sufficiency of which is acknowledged. The parties agree that the sum tendered under this Paragraph 3:

   (i) is independent consideration for the possession and use of Grantor's Property and represents no part of the State's compensation to be paid for the anticipated purchase of the Property; and
   (ii) will not be refunded to the State upon any acquisition of the Property by the State.

4. The effective date of this Agreement will be the date on which payment pursuant to Paragraphs 2 and 3 above was tendered to the Grantor by the State, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").

5. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

6. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.

7. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the State, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The State's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.

8. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the State until entry of judgment.

9. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property

related to the Highway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

10. The Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the State to take and use all other minerals and materials thereon, and thereunder.

11. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes title to the Property.

12. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.

13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.

14. It is agreed the State will record this document.

15. Other conditions: N/A.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the State of Texas and its assigns forever, for the purposes and subject to the limitations set forth above.

GRANTOR:

By: J. Oakley

Printed Name: James Oakley

Title: Burnet County Judge
(if GRANTOR is an entity other than an individual person)

Date: 9/12/17

By: ______________________________

Printed Name: ______________________________

Title: ______________________________
(if GRANTOR is an entity other than an individual person)

Date: ________________

Acknowledgement

State of Texas
County of Burnet

This instrument was acknowledged before me on ______________________________

by ______________________________.

____
Notary Public's Signature

Corporate Acknowledgment

State of Texas
County of

This instrument was acknowledged before me on ______________________________ by

______________________________, ______________________________

of ______________________________, a ______________________________

corporation, on behalf of said corporation.

____
Notary Public's Signature

THE STATE OF TEXAS

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: ______________________________
Right of Way Manager

Date: ______________________________

For Comptroller's use only

Application for Texas Identification Number

• *See instructions on back.*

1. Is this a new account? ☐ YES Mail Code 000 Complete Sections 1 - 5 ☐ NO Enter Mail Code Complete Sections 1, 2 & 5 Agency number

Section 1

2. **Texas Identification Number (TIN)** - Indicate the type of number you are providing to be used for your TIN
   - ☐ Employer Identification Number (EIN) *(9 digits)*
   - ☐ Social Security number (SSN) *(9 digits)*
   - ☐ Individual Taxpayer Identification Number (ITIN) *(9 digits)*
   - ☐ Comptroller's assigned number (FOR STATE AGENCY USE ONLY) *(11 digits)*
   - ☐ Current Texas Identification Number (FOR STATE AGENCY USE ONLY) *(11 digits)*

   Enter the number indicated

3. Are you currently reporting any Texas tax to the Comptroller's office such as sales tax or franchise tax? ☐ YES ☐ NO If "YES," enter Texas Taxpayer Number

Section 2

Payee Information ***(Please type or print)***

4. Name of payee (Individual or business to be paid)
5. Mailing address where you want to receive payments
6. *(Optional)*
7. *(Optional)*
8. *(Optional)*
9. City State ZIP code
10. Payee telephone number *(Area code and number)* SIC code Security type code (**0**, **1**, **2**) Zone code

Section 3

11. **Ownership Codes** - Check only one code by the appropriate ownership type that applies to you or your business.

- ☐ **I** - Individual Recipient (not owning a business)
- ☐ **S** - Sole Ownership (Individual owning a business): If checked, enter the owner's name and Social Security number (SSN)
  - Owner's name
  - SSN / ITIN *(9 digits)*
- ☐ **P** - Partnership: If checked, enter two partner's names and Social Security numbers (SSN). If a partner is a corporation, use the corporation's Employer Identification Number (EIN).
  - Name
  - SSN / ITIN / EIN *(9 digits)*
  - Name
  - SSN / ITIN / EIN *(9 digits)*
- ☐ **L** - Texas Limited Partnership: If checked, enter the Texas File Number
- ☐ **T** - Texas Corporation: If checked, enter the Texas File Number
- ☐ **A** - Professional Association: If checked, enter the Texas File Number
- ☐ **C** - Professional Corporation: If checked, enter the Texas File Number
- ☐ **O** - Out-of-State Corporation
- ☐ **G** - Governmental Entity
- ☐ **U** - State agency / University
- ☐ **F** - Financial Institution
- ☐ **R** - Foreign (out of U.S.A.)
- ☐ **N** - Other: If checked, explain.

Section 4

12. Payment Assignment? ☐ YES ☐ NO *Note: A copy of the assignment agreement between payees must be attached.*

Assignee name

Assignee TIN Assignment date

Section 5

13. Comments

14. **sign here** Authorized signature *(Applicant or authorized agent)* Date

15. Agency name Prepared by Phone *(Area code and number)*