



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

STATE OF TEXAS	§	ROW CSJ: 0864-01-073
	§	Parcel No.: 13
COUNTY OF HIDALGO	§	Project No.: NA

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 The County of Hidalgo (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. **FM 494** (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 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 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: None.

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.

Attest:
Hidalgo County Clerk

The County of Hidalgo

By: _____

By: _____

Printed Name: _____

Title: _____



Acknowledgment

State of Texas

County of _____

This instrument was acknowledged before me on _____

by _____,

of _____

, a _____, on behalf of said entity.

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: _____
Ramon Jimenez, Right of Way Supervisor
South R/W Project Delivery, ROW Division

Date: _____

EXHIBIT *A*

County: Hidalgo
Highway: FM 494 (N. Shary Road)
Limits: From FM 1924 to FM 676
CCSJ: 0864-01-069
RCSJ: 0864-01-073

Property Description for Parcel 13

Being a 0.0689 acre (3,000 square feet) parcel of land located in the Ramon Manquilla Survey, Abstract No. 42, Hidalgo County, Texas, being out of Lot 345, John H. Shary Subdivision, according to the map recorded in Volume 1, Page 17, of the Map Records of Hidalgo County, Texas, and being part of the called 13.32 acre Parcel 1 – Tract 2, described in the deed executed on the 18th day of April, 2006, from Sharest, Ltd. to The County of Hidalgo, as recorded in Document No. 1651444, of the Official Records of Hidalgo County, Texas, said 0.0689 acre (3,000 square feet) parcel of land being more particularly described by metes and bounds as follows:

COMMENCING at the southerly interior ell corner of the beforementioned 13.32 acre tract, from which a 5/8" iron rod found bears South 08° 39' 14" West – 44.58 feet;

THENCE, North 81° 25' 31" West along the westerly north line of the beforementioned 13.32 acre tract, same being a south line of the Sharest, Ltd – called 349.33 acre (net) Tr. VIII as described in Document No. 864240 (dated April 14, 2000), of the Official Records of Hidalgo County, Texas, for a distance of 1109.72 feet to a 5/8" iron rod with TxDOT aluminum cap (2" diameter) set at the **POINT OF BEGINNING** of the herein described parcel, in the proposed east right-of-way line of Farm to Market Road No. 494 (N. Shary Road), having coordinates of N = 16,619,470.01', E = 1,057,105.36', located 60.00 feet left of FM No. 494 Proposed Baseline Station (P.B.S.) 218+73.51;

- 1) **THENCE**, South 08° 35' 34" West along the proposed east right-of-way line of FM No. 494, through the interior of and entirely across the beforementioned 13.32 acre tract, for a distance of 150.00 feet to a 5/8" iron rod with TxDOT aluminum cap (2" diameter) set in the westerly south line of the 13.32 acre tract, same being in a north line of the beforementioned 349.33 acre tract, located 60.00 feet left of FM No. 494 P.B.S. 220+23.51;
- 2) **THENCE**, North 81° 25' 31" West along the westerly south line of the beforementioned 13.32 acre tract, same being a north line of the beforementioned 349.33 acre tract, for a distance of 20.00 feet to the southwest corner of the 13.32 acre tract in the east right-of-way line of FM No. 494 located 40.00 feet left of FM No. 494 P.B.S. 220+23.52, from which a 5/8" iron rod found bears South 09° 05' 04" West – 43.83 feet;
- 3) **THENCE**, North 08° 35' 34" East along the east right-of-way line of FM No. 494 (80' wide right-of-way), for a distance of 150.00 feet to the southerly and westerly northwest corner of the beforementioned 13.32 acre tract, located 40.00 feet left of FM No. 494 P.B.S. 218+73.52;

EXHIBIT A

- 4) **THENCE**, South 81° 25' 31" East along the westerly north line of the beforementioned 13.32 acre tract, same being a south line of the beforementioned 349.33 acre tract, for a distance of 20.00 feet to the **POINT OF BEGINNING**, containing 0.0689 acre (3,000 square feet) of land.

Notes:

1. All bearings and coordinates are referenced to the Texas Coordinate System of 1983 (NAD83) 2011 Adjustment, South Zone (4205), based on the TxDOT RTN Mountpoint NAD83_(2010)-South_VRS_CMR. All distances and coordinates shown are surface values and may be converted to grid by dividing a Combined Adjustment Factor of 1.000040.
2. The unit of measure is the U.S. Survey Foot.
3. A parcel plat of even date was prepared in conjunction with this property description.

I hereby certify that this survey was performed on the ground under my supervision and that this property description and accompanying parcel plat represent the facts as found at the time of the survey.

Survey Date: April 11, 2017



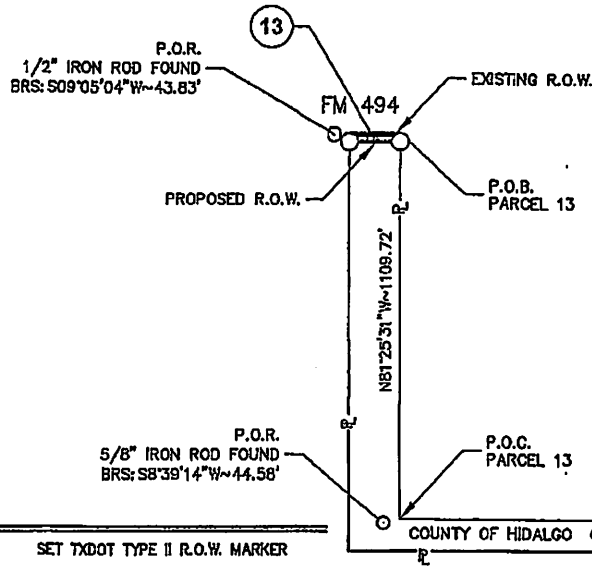
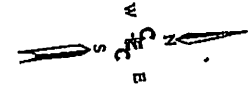
S. M. Kling
Registered Professional Land Surveyor
Texas Registration No. 2003
Civil Engineering Consultants
4101 S. Texas Ave. Suite A
Bryan, TX 77802
(979)846-6212
TBPLS Firm No. 10042800

May 9, 2017



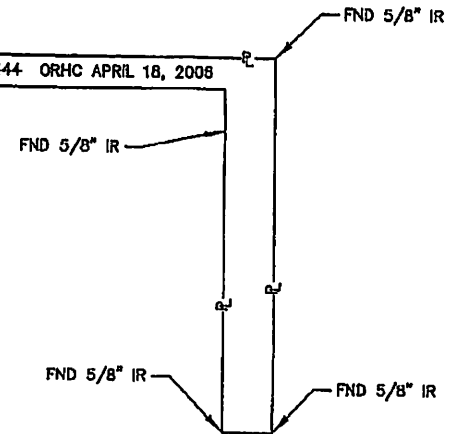
NOTES:

1. ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE TEXAS COORDINATE SYSTEM OF 1983 SOUTH ZONE (4205), (NAD 83) 2011 ADJ. BASED ON TxDOT RTN MOUNTPOINT NAD 83 (2010) SOUTH_VRS_CMR. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE VALUES AND MAY BE CONVERTED TO GRID BY DIVIDING BY A COMBINED ADJUSTMENT FACTOR OF 1.000040.
2. AN ABSTRACT WAS PERFORMED ON THIS PROPERTY BY CAROL B. WOOTEN WITH MORGAN/BROOKS RESOURCES, INC., 14526 JONES MALTSBERGER, SUITE 214, SAN ANTONIO, TX 78247 (210)478-0900. THE EASEMENTS ARE CLEARED FROM HISTORICAL RESEARCH LIMITED TO PLATS AS WELL AS THOSE EASEMENTS REFERENCED ON VESTING DEEDS AND FROM THE CURRENT OWNER.
3. FIELD SURVEYS WERE PERFORMED JANUARY, 2017 THROUGH MARCH, 2017.
4. A PROPERTY DESCRIPTION OF EVEN DATE WAS PREPARED IN CONJUNCTION WITH THIS PARCEL PLAT.
5. *LOT (#) INDICATES LOTS IN THE JOHN H. SHARY SUBDIVISION, RECORDED IN VOL. 1, PG. 17 M.R.H.C..



COUNTY OF HIDALGO CALLED 13.32 AC PARCEL 1 - TRACT#2 DOC#1651444 ORHC APRIL 18, 2008

PARENT TRACT INSET FOR
PARCEL NO. 13
(SCALE: 1"=500')



LEGEND:

- ☐ SET TxDOT TYPE II R.O.W. MARKER
- ⊙ SET TxDOT TYPE III R.O.W. MARKER
- ◻ FOUND TxDOT TYPE II R.O.W. MARKER
- △ CALCULATED POINT
- 1/2" IRON ROD FOUND (UNLESS OTHERWISE NOTED)
- 5/8" REBAR SET WITH 2" ALUMINUM TxDOT CAP
- P— PROPERTY LINE
- OE— OVERHEAD ELECTRIC LINE
- WL— WATERLINE LINE
- OT— OVERHEAD TELEPHONE
- HV— HIGH VOLTAGE LINE
- SD— UNDERGROUND IRRIGATION LINE
- UT— UNDERGROUND TELEPHONE LINE
- R.O.W. RIGHT-OF-WAY
- D.R.H.C. DEED RECORDS HIDALGO COUNTY
- O.R.H.C. OFFICIAL RECORDS OF HIDALGO COUNTY
- M.R.H.C. MAP RECORDS OF HIDALGO COUNTY
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- P.O.R. POINT OF REFERENCE



CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.
4101 S. TEXAS AVE., SUITE A
BRYAN, TEXAS 77802
P) 979.848.6212
F) 979.848.8252
Email: skling@cecctexas.com
Engineering No.: F-2214
Surveying No.: 100410-00



I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY SUPERVISION AND THAT THIS PLAT CORRECTLY REPRESENTS THE FACTS AS FOUND AT THE TIME OF THE SURVEY

S.M. Kling

NAME: STEWART KLING 4/11/17
RPLS No. 2003

PARCEL 13		
SHEET 3 OF 4		
DISTRICT: #21	FM 494	COUNTY HIDALGO
C.C.S.J. 0884-01-089		SURVEY DATE 4/11/17
R.C.S.J. 0884-01-073		
R.O.W. ACQUISITION: 0.0889 OF AN ACRE (3,000 SQ. FT.)		
REMAINDER: 13.1117 ACRES (571,146 SQ. FT.)		

For Comptroller's use only

Application for Texas Identification Number

• See instructions on back

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

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) Enter the number indicated _____
 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)

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 _____

FEI#

Section 2

Payee Information (Please type or print)

4. Name of payee (Individual or business to be paid)
The County of Hidalgo

5. Mailing address where you want to receive payments
P.O. Box 1356

6. (Optional) _____
 7. (Optional) _____
 8. (Optional) _____

9. City **Edinburg** State **TX** ZIP code **78539-0000**

10. Payee telephone number (Area code and number) **956-585-4509** 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) L - Texas Limited Partnership: If checked, enter the Texas File Number _____

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) _____

N - Other: If checked, explain. _____

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.)

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 _____
 Authorized signature (Applicant or authorized agent) _____ Date _____

14. **sign here** _____

15. Agency name **Sendero Acquisitions, LP** Prepared by **Carlos Lascrain** Phone (Area code and number) **956-821-9869**

Sign