

POSSESSION AND USE AGREEMENT
SH 195

STATE OF TEXAS

§

COUNTY OF WILLIAMSON

§

§

WHEREAS, MARK A. SHELTON and JAMIE L. SHELTON, hereinafter referred to as "GRANTOR", whether one or more, is the owner of that certain piece, parcel or tract of land in Williamson County, Texas, being more particularly described by metes and bounds in Exhibit "A", which is attached hereto and made a part hereof; and

WHEREAS, WILLIAMSON COUNTY, TEXAS, and the STATE OF TEXAS, acting by and through Williamson County, and its contractors and assigns, "collectively GRANTEE", plan to acquire a fee simple interest in the tract(s) of land described in Exhibits "A-B" (parcel 58, part 1-2), whether through contract and conveyance or through eminent domain proceedings; and

WHEREAS, the GRANTEE must have possession of said-described tract of land for the purposes described below,

Construction of the State Highway 195 roadway improvements and utility relocation (Project).

NOW THEREFORE, BE IT KNOWN:

That in consideration of the agreement at the request of GRANTOR to postpone the Special Commissioners Hearing currently scheduled for February 3, 2010, and in further consideration of the payment of the sum of TWENTY EIGHT THOUSAND FIVE HUNDRED THIRTY NINE and 00/100 Dollars (\$28,539.00), which compensation amount represents 90% of the estimated compensation for the acquisition of the Property to be acquired and any damages to the remaining property and which shall be paid to GRANTEE on or b, GRANTOR has GRANTED and CONVEYED and by these presents does GRANT and CONVEY unto the GRANTEE, its employees, agents and assigns an irrevocable right-of-entry, possession, and construction easement, with the right of exclusive possession over, upon, and across those tracts of land described in Exhibits "A-B" ("Property").

GRANTOR warrants and represents by, through, and under the GRANTOR, but not otherwise, that the title to the Property is free and clear of all liens and encumbrances on the title to the Property, or that any necessary and proper releases will be executed for the Property prior to or simultaneously with the first payment of funds being disbursed under this agreement. The GRANTOR further agrees to indemnify the GRANTEE from all unreleased or undisclosed liens, claims or encumbrances that are known to GRANTEE and that affect the Property.

It is expressly agreed, acknowledged, and understood that the consideration paid hereunder shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property interests described in Exhibits "A-B", and any other real property situated on Exhibits "A-B" or on the remainder property adjacent to Exhibits "A-B" to be acquired from GRANTOR.

It is expressly agreed, acknowledged, and understood that the easements, rights, and privileges herein granted are assignable and shall be used by the GRANTEE, its employees, agents, and assigns, for the purposes of entering upon the above-described property, before the closing of the contemplated real estate transaction or the acquisition of title through condemnation, and proceeding with surveying, site review and analysis, utility relocation, actual construction on the Project, and all manner of preparation and work attendant thereto. Utility relocation, if any, shall include, but not be limited to, the relocation of water and wastewater lines, electrical lines, cable television lines, telephone lines, gas lines, and their attendant facilities from the existing roadway right-of-way on the property described in Exhibits "A-B".

The GRANTEE, its employees, agents, and assigns shall have the full and exclusive right to control and use the above-described tracts, including the right to erect and maintain fencing and traffic and pedestrian control and devices and signs, the right to clear trees and vegetation, and the right to excavate, trench, fill, and grade the real property itself.

At no time during the possession of the property by GRANTEE for the purposes described herein shall GRANTOR be denied reasonable access and/or ingress to or egress from the remaining property.

The easement, rights, and privileges herein granted shall automatically terminate upon the contemplated closing of the above-described real estate transaction or the rendition of a final judgment in condemnation proceedings. However, this grant shall survive the termination of any purchase contract agreement and shall also survive any institution of condemnation proceedings.

The parties further agree as follows:


1. That by virtue of the granting of permission to the GRANTEE to take temporary possession of the Property in accordance with this Agreement, GRANTOR does not waive any legal rights or defenses under the Constitution of the United States, the Constitution and Statutes of the State of Texas or any other provisions of the law that GRANTOR may have in connection with the acquisition of any rights to the Property by the GRANTEE, including but not limited to the right to seek additional compensation for the acquisition of the Property described herein.
2. That this Right of Entry, Possession, and Construction Easement is irrevocable by GRANTOR but only valid until sixty (60) business days after the filing of a Special Commissioners' award in the Cause. Thereafter, continued possession, if at all, will be pursuant to a deposit of a Special Commissioners' award according to Texas law governing possession in a statutory eminent domain case.
3. The date of valuation for purposes of determining the value of the just compensation for the Property to be acquired shall be the date of final execution of this document by all of the parties.

5. This Agreement shall be binding upon the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. Specifically, Grantee's heirs, devisees, executors, administrators, legal representatives, successors or assigns are bound by terms of this agreement which state that the consideration paid hereunder to Grantee shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property described herein, whether said Grantee is or is not the owner of said property, now or in the future.
6. The easement, right, and privileges granted herein are exclusive, and GRANTOR covenants that it will not convey any other easement or conflicting rights within the area covered by this grant. This grant shall be binding upon legal representatives, successors, and assigns of GRANTOR for the term of this grant.
7. GRANTEE agrees that once the GRANTOR, in writing, asks for a special commissioner's hearing to be scheduled, the parties will undertake all reasonable efforts to hold a special commissioners' hearing within ninety (90) days after the GRANTOR'S request. Any award that exceeds \$28,539.00 will be deposited in the registry of the court within twenty (20) days following the award made by the special commissioners. If the compensation issue is settled through negotiations, a fixed date for receipt of the additional funds, if any, will be agreed upon as part of the negotiation process.

TO HAVE AND TO HOLD the possession of the above-described tracts of land for the purposes and subject to the limitations described above, and GRANTOR warrants that he knows of no persons or business entity owns a present possessory interest in the fee title to the above-described premises other than GRANTOR, and that there are no parties in possession of any portion of the referenced real property as lessees other than identified herein.

Executed this the 20 day of January, 2010.

GRANTOR:


Mark A. Shelton


Address: 925 Alday
Rockdale TX
76567


Jamie L. Shelton

Address: 925 Alday
Rockdale TX
76567

GRANTEE:

WILLIAMSON COUNTY, TEXAS


County Judge Dan A. Gattis
Williamson County, Texas

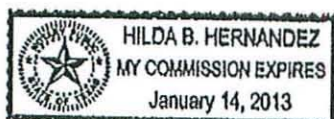
Address: 710 Main Street, Suite 101
Georgetown, Texas 78626


ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF Travis

This instrument was acknowledged before me on this the 20 day of January, 2010 by Mark A. Shelton and Jamie L. Shelton, in the capacity and for the purposes and consideration recited herein.




Notary Public, State of Texas
Printed Name: Hilda B Hernandez
My Commission Expires: 1/14/2013

STATE OF TEXAS

COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the ____ day of _____, 2010 by Dan A. Gattis, Williamson County Judge, in the capacity and for the purposes and consideration recited herein.

Notary Public, State of Texas
Printed Name: _____
My Commission Expires: _____

After recording return to:

Don Childs
Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664



Page 1 of 3 Pages
February 17, 2009

County: Williamson
Highway: SH 195
Limits: From 0.805 Miles South of the Bell County Line to 6.332 Miles South
ROW CSJ: 0440-01-037

Property Description
for Parcel 58 Part 1

BEING a 0.190 (8,260 square feet) acre parcel of land located in Williamson County, Texas, situated in the M. Wells Survey, Abstract 646, and being part of the two most westerly 0.50 acre tracts described (four contiguous 0.50 acre tracts described in deed) in a deed from James B. Johnson to Mark Sholton by deed dated November 12, 2004 and recorded in Document No. 2004088914 of the Williamson County Deed Records;

COMMENCING at a found 1/2 inch iron rod, being 567.11 feet right of Proposed Baseline Station 1055+28.37, on the existing east right-of-way line of Brizendine Avenue for the northwest corner of a 10.5 acre tract of land conveyed from John Carlton Brizendine to Peggy Sue Brizendine by deed dated August 29, 2001 and recorded in Document No. 2001078727 of the Williamson County Deed Records, and the southwest corner of a tract of land described as 1.00 acre conveyed from Jacky Don Duquette, et ux Melissa Sue Duquette, to Michael Bieren and wife, Deanna Bieren, by deed dated May 25, 2001 and recorded in Document No. 2001036826 of the Williamson County Deed Records;

THENCE North 68° 53' 03" East a distance of 208.71 feet, along the south line of said 1.00 acre tract, to a 1/2" iron rod found for the southeast corner of said 1.00 acre tract and for the southwest corner of most westerly 0.50 acre tract of the above referenced 0.50 acre tracts;

THENCE North 20° 55' 01" West a distance of 161.29 feet, to a set 5/8 inch iron rod with a yellow plastic cap marked "RODS SURVEYING, INC.", being 337.64 feet right of Proposed Baseline Station 1053+97.39, for the POINT OF BEGINNING;

- (1) THENCE North 20° 55' 01" West a distance of 47.05 feet, along the east line of said 1.00 acre tract and the west line of said most westerly 0.50 acre tract, to a found 1/2 inch iron rod for the northeast corner of said 1.00 acre tract and the most northwesterly corner of said 10.5 acre tract on the existing south right-of-way line of Williamson County Road No. 229;


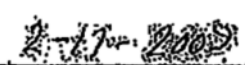
- (2) THENCE North $68^{\circ} 48' 43''$ East a distance of 163.85 feet, along the existing south right-of-way line of said Williamson County Road No. 229 and the north line of the two most westerly 0.50 acre tracts referenced in the aforementioned deed, to a set Texas Department of Transportation Type II concrete monument, being 168.69 feet right of Proposed Baseline Station 1053+72.13;
- (3) THENCE South $33^{\circ} 00' 30''$ East a distance of 51.75 feet, along the proposed west right-of-way line of State Highway 195 and a Control of Access line, crossing a 0.50-acre tract, to a set Texas Department of Transportation Type II concrete monument, being 165.00 feet right of Proposed Baseline Station 1054+24.75;
- (4) THENCE South $59^{\circ} 59' 12''$ West a distance of 174.80 feet, along the proposed south right-of-way line of said Williamson County Road No. 229, crossing said two most westerly 0.50 acre tracts, to the POINT OF BEGINNING and containing 0.190 acres (8,260 square feet) of land.

Basis of bearing is the Texas State Plane Coordinate System, Central Zone, North American Datum 1983 (1993 Adjustment). All coordinates are adjusted to surface using a surface adjustment factor of 1.000120.

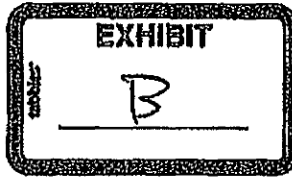
Access is prohibited across the "Control of Access Line" to the transportation facility from the adjacent property.

A plat of even survey date herewith accompanies this property description.

Surveyed by:
RDS Surveying, Inc.
6810 Lee Road, Spring, Texas 77379
Phone (281) 379-6388


Scott Morris, Registered Professional Land Surveyor No. 5076 Date 





Page 1 of 3 Pages
February 17, 2009

County: Williamson
Highway: SH 195
Limits: From 0.805 Miles South of the Bell County Line to 6.332 Miles South
ROW CSJ: 0440-01-037

Property Description
for Parcel 58 Part 2

BEING a 1.144 acre parcel of land located in Williamson County, Texas, situated in the M. Wells Survey, Abstract 646, and being part of four 0.50 acre tracts of land described in a deed from James E. Johnson to Mark Shelton by deed dated November 12, 2004 and recorded in Document No. 2004088914 of the Williamson County Deed Records;

COMMENCING at a found 1/2 inch iron rod, being 360.23 feet right of Proposed Baseline Station 1055+57.12, for the southwest corner of the most westerly 0.50 acre tract referenced above, and the southeast corner of a tract of land described as 1.00 acre conveyed from Jacky Don Duquette and wife, Melissa Sue Duquette, to Michael Bieren and wife, Deanna Bieren, by deed dated May 25, 2001 and recorded in Document No. 2001036826 of the Williamson County Deed Records;

THENCE North 68° 50' 11" East a distance of 187.46 feet, along the south line of the two most westerly 0.50 acre tracts, to a set 5/8 inch iron rod with a Texas Department of Transportation aluminum cap, being 174.68 feet right of Proposed Baseline Station 1055+82.70, for the POINT OF BEGINNING and being a Control of Access line;

- (1) THENCE North 25° 30' 50" West a distance of 158.24 feet, along the proposed west right-of-way line of said State Highway 195 and said Control of Access line, crossing said 0.50 acre tract, to a set Texas Department of Transportation Type II concrete monument, being 165.00 feet right of Proposed Baseline Station 1054+24.75;
- (2) THENCE North 33° 06' 30" West a distance of 51.75 feet, along the proposed west right-of-way line of said State Highway 195 and said Control of Access line and crossing said 0.50 acre tract, to a set Texas Department of Transportation Type II concrete monument, being 168.69 feet right of Proposed Baseline Station 1053+73.13;
- (3) THENCE North 68° 48' 43" East a distance of 253.51 feet, along the existing south right-of-way line of said Williamson County Road No. 229 and the north line of said 0.50 acre tracts, to a found 1/2 inch iron rod for the northeast corner of the most easterly 0.50 acre tract of the aforementioned four 0.50 acre tracts;

- (4) ~~THENCE~~ South $20^{\circ} 55' 27''$ East a distance of 208.52 feet, along the east line of the most easterly 0.50 acre tract, to a found $1/2''$ iron rod for the southeast corner of said most easterly 0.50 acre tract;
- (5) ~~THENCE~~ South $68^{\circ} 50' 11''$ West a distance of 229.93 feet, along the south line of said 0.50 acre tracts, to the POINT OF BEGINNING and containing 1.144 acres of land.

Basis of bearing is the Texas State Plane Coordinate System, Central Zone, North American Datum 1983 (1993 Adjustment). All coordinates are adjusted to surface using a surface adjustment factor of 1.000120.

Access is prohibited across the "Control of Access Line" to the transportation facility from the adjacent property.

A plat of even survey data herewith accompanies this property description.

Surveyed by:
RODS Surveying, Inc.
6810 Lee Road, Spring, Texas 77379
Phone (281) 379-6388

Scott Morris 2-17-2009
Scott Morris, Registered Professional Land Surveyor, No. 5076 Date



