

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS
COUNTY OF WILLIAMSON

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Project No.: SH 195
Parcel No.: 52
CSJ No.: 0440-01-037

This agreement, effective the _____ day of _____, 2009, between the State of Texas, acting by and through Williamson County (collectively the "State"), and PEGGY SUE SIMPSON F/K/A PEGGY SUE BRIZENDINE and JOHN BRIZENDINE (the "Grantor(s)"), grants an irrevocable right to possession and use to the State, its contractors, agents and all others deemed necessary by the State for the purpose of constructing a portion of Highway No. SH 195. The property involved is described more fully in field notes and plat map (attached hereto as Exhibits "A-B") and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the State which is set forth in Paragraph two below, the receipt and sufficiency of which is acknowledged, Grantor(s) grant, bargain, sell and convey to the State exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. This Possession and Use Agreement will extend to the State, its contractors, assigns and/or owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of these utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use, the State will tender to the Grantor(s) the sum of Two Hundred Fifty Thousand One Hundred Forty Six and 00/100 Dollars (\$250,146.00). The Grantor(s) 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 as set out in paragraph 3 below. The parties agree that the sum tendered represents approximately 90% of the State's current approved value. The approved value is the State's determination of the just compensation owed to the Grantor(s) for the full fee title 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 this sum will be deducted from any final settlement amount, award or verdict. In the event the final award or verdict for the fee title is less than the amount the State has paid for the possession and use of the property, then the Grantors agree that the original amount tendered represents an overpayment and that the State is entitled to seek a refund.
3. The compensation shall be paid by State to Georgetown Title Company, to be held in escrow until completion of the release or other satisfaction of any title curative matters as shown on Schedule C of State's Title Commitment GF800063700, Dated May 1, 2009, for the acquisition of the Property described herein. Any remaining funds shall be disbursed to Grantors after the completion of the requirements of this paragraph, and after receipt of a written agreement between the Grantors settling out the amount to be paid to each party. Grantors further warrant that no other person or corporation owns an interest in the fee title to the Property.

The Grantor(s) further agree(s) to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

4. This agreement is made with the understanding that the State will continue to negotiate in good faith with the Grantor(s) to acquire a fee interest in the Property by direct purchase. It is further understood in the event a settlement is not reached within sixty (60) days of the effective date of this agreement, the State shall begin proceedings in eminent domain to acquire fee title to the Property if requested by Grantor. The State will not unreasonably delay the commencement of proceedings under eminent domain once the time provided for in this paragraph has expired.
5. The parties agree that the valuation date for determining the amount of just compensation for the fee title for the Property, for negotiation or eminent domain proceeding purposes, will be the date on which payment was tendered to the Grantor(s) pursuant to paragraph two above.
6. This grant will not prejudice Grantor's rights to receive full and just compensation for the fee title interest to be acquired by the State in the Property, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of Grantors' lands, save and except all oil, gas and sulphur. This grant will not prejudice Grantor(s) rights to any relocation benefits for which they may be eligible.
7. In the event the State institutes eminent domain proceedings, the State will not be liable to Grantor(s) 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.
8. The purpose of this agreement is to allow the State to proceed with its construction project without delay and to allow the Grantor(s) to avoid litigation at this time.
9. Grantors reserve all of the oil, gas and sulphur in and under the land herein conveyed but waive all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. 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. The extraction of oil, gas and minerals may not affect the geological stability of the surface.
10. The undersigned Grantor(s) agree(s) to pay all taxes, including prorated taxes for the current year, and special assessments due at the time the State takes possession of the Property.
11. This agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties.
12. It is agreed the State will record this document
13. 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.


IN WITNESS WHEREOF, THIS INSTRUMENT IS EXECUTED ON THIS THE _____ DAY OF _____, 2010.

Grantors:

Peggy Sue Simpson f/t/a
Peggy Sue Brizendline


John Brizendline


ACCEPTED AND AGREED TO BY WILLIAMSON COUNTY, THIS THE _____ DAY OF
SEPTEMBER, 2010.


Dan A. Gattis
County Judge

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.

IN WITNESS WHEREOF, THIS INSTRUMENT IS EXECUTED ON THIS THE _____ DAY OF _____, 2010.

Grantors:


Peggy Sue Simpson f/k/a
Peggy Sue Brizendine

John Brizendine

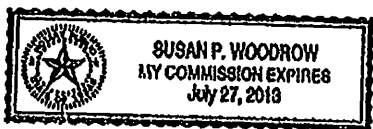
ACCEPTED AND AGREED TO BY WILLIAMSON COUNTY, THIS THE _____ DAY OF
SEPTEMBER, 2010.

Dan A. Gattis
County Judge

Acknowledgement

State of Texas
County of Williamson

This instrument was acknowledged before me on February 15, 2009 by
Peggy Sue Simpson f/k/a Peggy Sue Brizendine, in the capacity and for the purposes and
consideration recited herein.



Susan P. Woodrow
Notary Public's Signature

State of Texas
County of Williamson

This instrument was acknowledged before me on _____ by
John Brizendine, in the capacity and for the purposes and consideration recited herein.

Notary Public's Signature

State of Texas
County of Williamson

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

Notary Public's Signature

Acknowledgement

State of Texas
County of Williamson

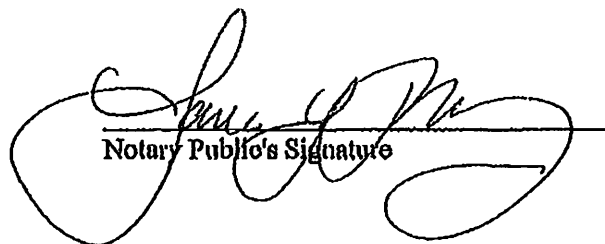
This instrument was acknowledged before me on _____ by
Peggy Sue Simpson f/k/a Peggy Sue Brizendine, in the capacity and for the purposes and
consideration recited herein.

Notary Public's Signature

State of Texas
County of Williamson

This instrument was acknowledged before me on Feb. 12, 2010 by
John Brizendine, in the capacity and for the purposes and consideration recited herein.




Notary Public's Signature

State of Texas
County of Williamson

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

Notary Public's Signature