

POSSESSION AND USE AGREEMENT

STATE OF TEXAS

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§

COUNTY OF WILLIAMSON

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WHEREAS, MARION K. SHIPMAN, hereinafter referred to as “GRANTOR”, whether one or more, is the owner of or tenant on that certain piece, parcel or tract of land in Williamson County, Texas, being more particularly described by metes and bounds in Exhibits “A-B” (the “Property”), 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, Texas, plan to acquire a fee simple interest in the tract(s) of land described in Exhibit “A”, and CHISHOLM TRAIL SPECIAL UTILITY DISTRICT and PEDERNALES ELECTRIC COOPERATIVE plan to acquire a waterline/electric utility easement interest in the tract of land described in Exhibit “B”, collectively acting through Williamson County, Texas and identified as “GRANTEE” herein, whether through contract and conveyance or through eminent domain proceedings; and

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

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

NOW THEREFORE, BE IT KNOWN:

That in consideration of the payment of ONE HUNDRED THIRTY THOUSAND FOUR HUNDRED TWO AND 00/100 Dollars for the right of way (\$130,042.00) and TWELVE THOUSAND TWO HUNDRED FIFTY SEVEN and 00/100 Dollars for the easement interests (\$12,042.00), which amount represents 100% of the estimated compensation for the acquisition of the right of way and easement Property to be acquired and any damages to or cost to cure the remaining property, 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”.

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 herein and shown in Exhibits “A-B”.

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 on the Property described in Exhibit "A". The property described in Exhibits "B" shall be used only for the installation of waterline and electric utility facilities.

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 for its current uses.

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.
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 a deposit of a Special Commissioners Award in any applicable condemnation suit for this acquisition.

4. This Agreement shall be binding upon the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. Specifically, Grantor'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 Grantor 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 Grantor is or is not the owner of said property, now or in the future.
5. 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.
6. GRANTEE agrees that once the GRANTOR, in writing, asks for a special commissioner's hearing to be scheduled, a Petition in Condemnation will be filed to acquire the specified parcel(s) within thirty (30) days after said written request is received. Furthermore, both parties will undertake all reasonable efforts to hold a special commissioners' hearing within ninety (90) days after the GRANTOR asks for a special commissioners' hearing to be scheduled. Any award that exceeds \$130,042 for the fee interests sought (parcel 111), or \$12,042 for the easement interests sought (parcel 111E), 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 for any of the required property interests 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 which 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.

[signature page follows]

Executed this the ____ day of _____, 2010.

GRANTOR:

Janis Johnson

Address: _____

Richard W. Johnson

Address: _____

GRANTEE:

WILLIAMSON COUNTY, TEXAS

County Judge Dan A. Gattis

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

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on this the ____ day of _____, 2010 by Janis Johnson and Richard W. Johnson, in the capacity and for the purposes and consideration recited herein.

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

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