

109 A



POSSESSION AND USE AGREEMENT FOR UTILITY RELOCATION PURPOSES

STATE OF TEXAS

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Project No.: SH195

§

Parcel No.: 109A—utility easements

COUNTY OF WILLIAMSON

§

CSJ No.: 0440-02-0112

This agreement, effective the _____ day of _____, 2011, between the CHISHOLM TRAIL SPECIAL UTILITY DISTRICT and PEDERNALES ELECTRIC COOPERATIVE, INC., acting by and through Williamson County, Texas (collectively the "County"), and JOHN SCHNEIDER, Trustee of the JBS Heritage Trust (the "Grantor(s)"), grants an irrevocable right to possession and use to the County, its contractors, agents and all others deemed necessary by the County for the purpose of constructing electric and waterline utility relocations adjacent to the proposed State Highway No. 195 improvement project. The property involved is described more fully in field notes and plat map attached as Exhibit "A" and made a part of this Agreement by reference, and includes the temporary construction easement as shown in Exhibit "A" (the "Property").

1. For the consideration paid by the County 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 County exclusive possession and use of the Property for the purpose of electric facility and water line facility relocations and appurtenances thereto and the right to remove any improvements. This Possession and Use Agreement will extend to Chisholm Trail Special Utility District and Pedernales Electric Cooperative, Inc., their contractors, and assigns. 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 County will tender to the Grantor(s) the sum of TWENTY FOUR THOUSAND NINE HUNDRED THIRTY-SIX and 00/100 Dollars (\$24,936.00). The Grantor(s) agrees that this sum represents adequate and full compensation for the possession and use of the Property. The County will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents 90 percent of the County's approved value. The approved value is the County's determination of the just compensation owed to the Grantor(s) for the full electric/waterline easement interest and temporary construction easement interest to be acquired by the County in the Property, and damages to the remainder, if any. 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 utility easement interests is less than the amount the County 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 County is entitled to seek a refund.
3. The 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 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. GRANTOR further agrees to indemnify State from all unreleased or undisclosed liens, claims or encumbrances that are known to Grantor and that affect the Property. This conveyance is made by GRANTOR and accepted by County subject to the following:

- a. visible and apparent easements not appearing of record;
 - b. any discrepancies, conflicts, or shortages in area or boundary lines or any encroachments or any overlapping of improvements which a current survey would show; and
 - c. easements, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and encumbrances for taxes and assessments (other than liens and conveyances) that affect the Property and are presently of record in the Official Public Records of the county in which the Property is located, but only to the extent that said items are still valid and in force and effect at this time.
4. This agreement is made with the understanding that the County will continue to negotiate in good faith with the Grantor(s) to acquire the easement interest in the Property by direct purchase. It is further understood in the event a settlement is not reached within ninety (90) days of the effective date of this agreement, at the Grantor's request the County shall begin proceedings in eminent domain to acquire fee title to the Property. The County 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 purposes of determining the value of the just compensation for the Property to be acquired shall be the date of the deposit by County of any amount by which a special commissioners' award exceeds the consideration paid for this Agreement or the date of the special commissioners award if it does not exceed the amount of the consideration paid for this Agreement. The Property shall be valued, as of the date of valuation, as if any improvements located thereon as of the date the consideration is paid for this Agreement are still located on the Property.
 6. This grant will not prejudice Grantor's rights to receive full and just compensation for the easement interests to be acquired by the County in the Property, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of Grantors' lands. This grant will not prejudice Grantor(s) rights to any relocation benefits for which they may be eligible.
 7. In the event the County institutes eminent domain proceedings, the County 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 County until entry of judgment.
 8. The purpose of this agreement is to allow the County 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. 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 County 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 County will record this document

13. Other conditions: The parties agree that the grant of this Possession and Use Agreement, and the presence of any utility provider facilities constructed upon the property may not be used as evidence or as an assumption of the existence of a utility easement or any utility provider facilities on the Property as part of the valuation of the parent tract(s) by the State in connection with its acquisition of parcel 109A right of way or the value thereof.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to Chisholm Trail Special Utility District and Pedernales Electric Cooperative, Inc, acting by and through Williamson County, and their 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 _____, 2011.

Grantors:


JOHN B. SCHNEIDER, Trustee of the
JBS Heritage Trust

ACCEPTED AND AGREED TO BY CHISHOM TRAIL SPECIAL UTILITY DISTRICT AND PEDERNALES ELECTRIC COOPERATIVE, ACTING BY AND THROUGH WILLIAMSON COUNTY, THIS THE ____ DAY OF _____, 2011.

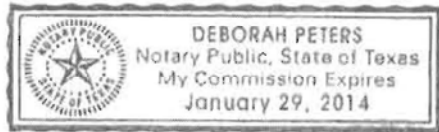
WILLIAMSON COUNTY, TEXAS

By: 
Dan A. Gattis, County Judge

Acknowledgement

State of Texas
County of Lavaca

This instrument was acknowledged before me on April 29, 2011
by John B. Schneider, in the capacity and for the purposes and consideration recited herein.



[Signature]
Notary Public's Signature

Acknowledgement

State of Texas
County of _____

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

Notary Public's Signature

After recording return to:

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

STATE OF TEXAS
COUNTY OF WILLIAMSON

EASEMENT

0.3080 ACRE SITUATED IN
BURRELL EAVES SURVEY
ABSTRACT 216
WILLIAMSON COUNTY, TEXAS

LEGAL DESCRIPTION

DESCRIPTION OF A 0.3080 ACRE (13,415 SQUARE FEET) TRACT SITUATED IN THE BURRELL EAVES SURVEY, ABSTRACT 216, WILLIAMSON COUNTY, TEXAS AND BEING A PORTION OF A CALLED 10.22 ACRES TRACT AS DESCRIBED IN A SPECIAL WARRANTY DEED TO JOHN B. SCHNEIDER AND RECORDED IN DOCUMENT NO. 2010030327 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2-inch iron rod found in the existing southwest right-of-way line of State Highway No. 195 (SH195), a 100-foot wide right-of-way, for the north corner of said 10.22 acres tract, same being the east corner of a called 1.00 acre tract as described in a General Warranty Deed with Vendor's Lien in Favor of Third Party to Debra Cahill and John Cahill and recorded in Document No. 2000054348 of said Official Public Records of Williamson County, Texas;

THENCE leaving said existing southwest right-of-way line of SH195, with the northwest line of said 10.22 acres tract, same being the southeast line of said 1.00 acre Cahill tract, S59°35'31"W a distance of 161.58 feet to the intersection of said northwest line of the 10.22 acres tract and said southeast line of the 1.00 acre Cahill tract with the proposed southwest right-of-way line of SH195, a varying width right-of-way, and being the **POINT OF BEGINNING** of the tract described herein;

THENCE leaving said northwest line of the 10.22 acres tract and said southeast line of the 1.00 acre Cahill tract, crossing said 10.22 acres tract with said proposed southwest right-of-way line of SH195, S59°39'26"E a distance of 667.75 feet to the intersection of said proposed southwest right-of-way line of SH195 with the southeast line of said 10.22 acres tract, same being the northwest line of a called 1.00 acre tract as described in a Warranty Deed to Janis Johnson and husband, Richard W. Johnson and recorded in Document No. 2003049663 of said Official Public Records of Williamson County, Texas;

THENCE leaving said proposed southwest right-of-way line of SH195, with said southeast line of the 10.22 acres tract and said northwest line of the 1.00 acre Johnson tract, S44°56'18"W a distance of 20.67 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ESMT" set, and from which a 1/2-inch iron rod with plastic cap found in said southeast line of the 10.22 acres tract for the west corner of said 1.00 acre Johnson tract bears S44°56'18"W a distance of 233.56 feet;

THENCE leaving said southeast line of the 10.22 acres tract and said northwest line of the 1.00 acre Johnson tract, crossing said 10.22 acres tract, N59°39'26"W a distance of 673.74 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ESMT" set in said northwest line of the 10.22 acres tract and said southeast line of the 1.00 acre Cahill tract, and from which a 1/2-inch iron rod found in said northwest line of the 10.22 acres tract for the south corner of said 1.00 acre Cahill tract bears S59°35'31"W a distance of 39.78 feet;

THENCE with said northwest line of the 10.22 acres tract and said southeast line of the 1.00 acre Cahill tract, N59°35'31"E a distance of 22.92 feet to said POINT OF BEGINNING and containing 0.3080 acre.

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

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That I, Dan H. Clark, a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during the month of October 2010.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 24rd day of March 2011, A.D.

Halff Associates, Inc.
4030 West Braker Lane
Suite 450
Austin, Texas 78759



 3/24/2011
Dan H. Clark
Registered Professional Land Surveyor
No. 6011 – State of Texas

ADDITIONAL NOTES:

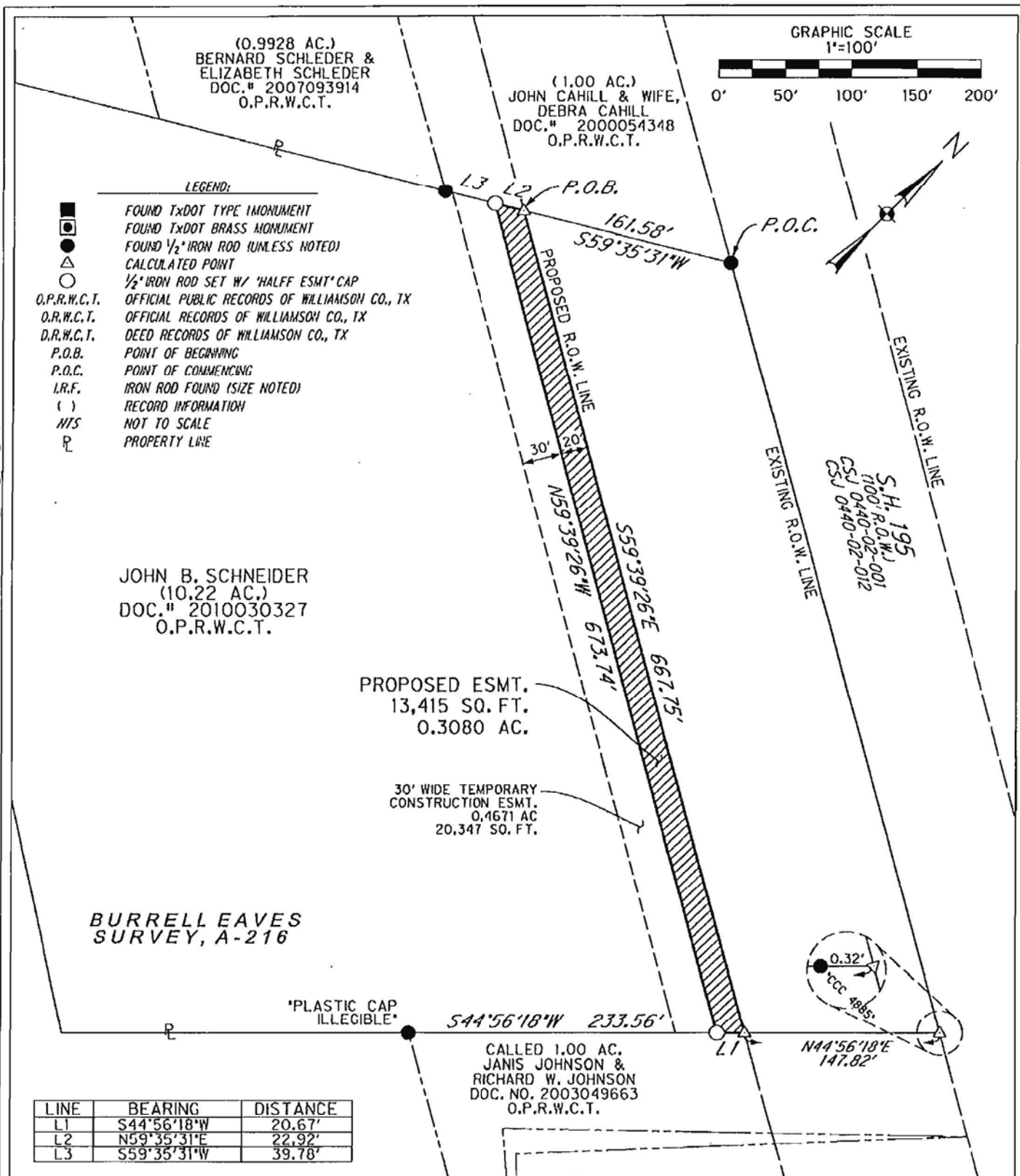
1. Bearings shown hereon are based on the Texas State Plane Coordinates System, NAD 83, Central Zone, using a combined surface adjustment factor of 1.000120. Distances shown hereon are surface distances.
2. This description has been prepared as a result of a survey completed in October 2010 and is submitted in connection with a survey drawing prepared by Halff Associates, Inc. titled VEXH-109A-26903.dgn, dated March 24, 2011, AVO No. 26903.
3. See Texas Department of Transportation Right-of-Way map CSJ No. 0440-01-036 & 0440-02-012 for detailed information regarding State Highway 195.

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3/24/2011 3:52:23 PM



HALFF

4030 WEST BRAXER LANE, SUITE 450
AUSTIN, TEXAS 78759-8356
TEL (512) 252-8184
FAX (512) 262-8141

SH 195 UTILITY

**EASEMENT FOR
PARCEL 109 A**

Project No.: 26903

Issued: 3/24/2011

Accompanying file Name:
SV-LD-109-A-26903.doc

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