

POSSESSION AND USE AGREEMENT FOR UTILITY RELOCATION PURPOSES

STATE OF TEXAS	§	Project No.: SH195
	§	Parcel No.: 109C—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 JANIS K. JOHNSON, Trustee of the JKJ 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 ELEVEN THOUSAND EIGHT HUNDRED FORTY-ONE and 00/100 Dollars (\$11,841.00). 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.

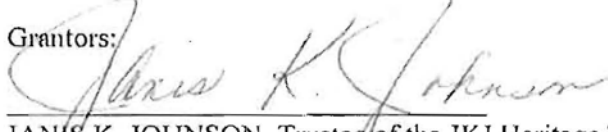
12. It is agreed the County will record this document

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 109C 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 21st DAY OF April, 2011.

Grantors:




JANIS K. JOHNSON, Trustee of the JKJ Heritage Trust

ACCEPTED AND AGREED TO BY CHISHOLM 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

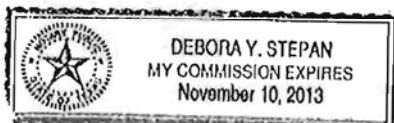
Acknowledgement

State of Texas

County of TRAVIS

This instrument was acknowledged before me on April 21, 2011

by Janis K. Johnson, in the capacity and for the purposes and consideration recited herein.




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

0.4545 ACRE SITUATED IN
BURRELL EAVES SURVEY
ABSTRACT 216
WILLIAMSON COUNTY, TEXAS

LEGAL DESCRIPTION

DESCRIPTION OF A 0.4545 ACRE (4,457 SQUARE FEET) TRACT SITUATED IN THE BURRELL EAVES SURVEY, ABSTRACT 216, WILLIAMSON COUNTY, TEXAS AND BEING A PORTION OF A CALLED 12.54 ACRES TRACT AS DESCRIBED IN A SPECIAL WARRANTY DEED TO JANIS K. JOHNSON, TRUSTEE AND RECORDED IN DOCUMENT NO. 2010030329 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 with plastic cap stamped "RPLS 5617" 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 12.54 acres tract;

THENCE leaving said existing southwest right-of-way line of SH195, with the northwest line of said 12.54 acres tract, S30°12'21"W a distance of 240.91 feet to a 1/2-inch iron rod with plastic cap stamped "RODS" found at the intersection of said northwest line of the 12.54 acres tract with the proposed southwest right-of-way line of SH195, a varying width right-of-way, for the **POINT OF BEGINNING** of the tract described herein;

THENCE leaving said northwest line of the 12.54 acres tract, crossing said 12.54 acres tract with said proposed southwest right-of-way line of SH195 the following two (2) courses and distances:

1. S45°46'53"E a distance of 850.91 feet to an angle point, and
2. S54°09'23"E a distance of 218.32 feet to a 1/2-inch iron rod found at the intersection of said proposed southwest right-of-way line of SH195 with the southeast line of said 12.54 acres tract, same being the northwest line of a called 5.90 acres tract as described in a Correction Special Warranty Deed to Shell-Hwy. 195, LLC and recorded in Document No. 2010016401 of said Official Public Records of Williamson County, Texas, same being the west corner of a called 3.687 acres tract as described in a Special Warranty Deed to the State of Texas and recorded in Document No. 2010016408 of said Official Public Records of Williamson County, Texas, and from which a 1/2-inch iron rod found in said existing southwest right-of-way line of SH195 for the northeast corner of said 12.54 acres tract, same being the most northern corner of said 3.687 acres and said 5.90 acres tract, bears N68°46'25"E a distance of 596.17 feet;

THENCE leaving said proposed southwest right-of-way line of SH195, with said southeast line of the 12.54 acres tract and said northwest line of the 5.90 acres tract, S68°46'25"W a distance of 13.16 feet to a 1/2-inch iron rod with plastic cap stamped "RPLS 5617" found for the south corner of said 12.54 acres tract;

THENCE with the southwest line of said 12.54 acres tract, N55°24'33"W a distance of 238.13 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ESMT" set for an angle point;

THENCE leaving said southwest line of the 12.54 acres tract, crossing said 12.54 acres tract, N45°46'53"W a distance of 821.66 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF ESMT" set in said northwest line of the 12.54 acres tract, and from which a 1/2-inch iron rod with plastic cap stamped "RPLS 5617" found for the west corner of said 12.54 acres tract bears S30°12'21"W a distance of 137.83 feet;

THENCE with said northwest line of the 12.54 acres tract, N30°12'21"E a distance of 20.61 feet to said **POINT OF BEGINNING** and containing 0.4545 acre.

THE STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

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 24th day of March 2011, A.D.

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



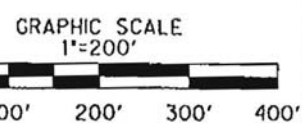
[Signature] 3/24/2011
Dan H. Clark
Registered Professional Land Surveyor
No. 6011 – State of Texas

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-109C-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.

- LEGEND:**
- FOUND TxDOT TYPE IV MONUMENT
 - FOUND TxDOT BRASS MONUMENT
 - FOUND 1/2" IRON ROD (UNLESS NOTED)
 - △ CALCULATED POINT
 - 1/2" IRON ROD SET W/ 1/2" HALFF ESMT CAP
 - O.P.R.W.C.T. OFFICIAL PUBLIC RECORDS OF WILLAMSON CO., TX
 - O.R.W.C.T. OFFICIAL RECORDS OF WILLAMSON CO., TX
 - D.R.W.C.T. DEED RECORDS OF WILLAMSON CO., TX
 - P.O.B. POINT OF BEGINNING
 - P.O.C. POINT OF COMMENCING
 - L.R.F. IRON ROD FOUND (SIZE NOTED)
 - || RECORD INFORMATION
 - N/S NOT TO SCALE
 - R PROPERTY LINE

WILFORD C. SCHNEIDER,
TRUSTEE
11.17 AC.
DOC. NO. 2010030328
O.P.R.W.C.T.



LINE	BEARING	DISTANCE
L1	S54°09'23"E	218.32'
L2	S68°46'25"W	13.16'
L3	N55°24'33"W	238.13'
L4	N30°12'21"E	20.61'
L5	S68°46'25"W	59.61'
L6	S30°12'21"W	137.83'

WILFORD C. SCHNEIDER,
ET AL
APPROX. 326 AC.
DOC. NO. 2010030325
O.P.R.W.C.T.

REMAINDER OF
CALLED 419.34 AC.
VOL. 528, PAGE 590
D.R.W.C.T.

30' WIDE TEMPORARY
CONSTRUCTION ESMT.
0.5024 AC
21,885 SQ. FT.

PROPOSED ESMT.
19,796 SQ. FT.
0.4545 AC.

JANIS K. JOHNSON,
TRUSTEE
12.54 AC.
DOC. NO. 2010030329
O.P.R.W.C.T.

BURRELL LEAVES
SURVEY, A-216
W. ROBERTS
SURVEY, A-524

ALL-WRIGHT INVESTMENTS, LLC
REMAINDER OF A
CALLED 21.01 AC. TRACT
DOC. # 2007019259
O.P.R.W.C.T.

SHELL HWY.
195, LLC
REMAINDER OF
A CALLED
5.90 AC.
TRACT DOC. #
2010016401
O.P.R.W.C.T.

STATE OF TEXAS
3.687 AC.
DOC. # 2010016408
O.P.R.W.C.T.

S.H. 195
(100' R.O.W.)
CSJ 0440-02-001, CSJ 0440-02-012

EXISTING R.O.W. LINE
EXISTING R.O.W. LINE

HALFF
4030 WEST BRAKER LANE, SUITE 450
AUSTIN, TEXAS 78759-5358
TEL (512) 252-8184
FAX (512) 252-8141

SH 195 UTILITY
EASEMENT FOR
PARCEL 109 C

Project No.: 26903
Issued: 3/24/2011
Accompanying file Name:
SV-LD-109-C-26903.doc

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Design

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