

POSSESSION AND USE AGREEMENT FOR UTILITY RELOCATION PURPOSES

STATE OF TEXAS	Š	Project No.: SH195	
	§	Parcel No.: 107—utility easements	
COUNTY OF WILLIAMSON	§	CSJ No.: 0440-02-0112	
		, 2011, between the CHISHO	
TRAIL SPECIAL UTILITY DIST	TRICT and P	EDERNALES ELECTRIC COOPERATIVE, 1	NC.,
acting by and through Williamson C	County, Texas	(collectively the "County"), and FWD PROPE	RTY
INVESTORS, L.P., LDJ PROPI	ERTIES, LTI	D., and MMSG LIMITED PARTNERSHIP	(the
"Grantor(s)"), grants an irrevocable	right to posses	sion and use to the County, its contractors, agents	and
1, 7, 0	•	purpose of constructing electric and waterline u	
	•	hway No. 195 improvement project. The project	
		plat map (attached as Exhibit "A") and made a pa	
this Agreement by reference (the "Pr			

- 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 ONE HUNDRED FIVE THOUSAND ONE HUNDRED TWENTY FOUR and 00/100 Dollars (\$105,124.00). 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 107 right of way or the value thereof.

of parcel 107 right of way or the value thereof.	tract(s) by the State in connection with its acquisition
appurtenances belonging to Chisholm Trail Specia Inc, acting by and through Williamson County, and	ribed and conveyed, together with all the rights and I Utility District and Pedernales Electric Cooperative, d their assigns forever, for the purposes and subject to
IN WITNESS WHEREOF, THIS INSTRUMENT	is executed on this the 27% day of
/	FWD PROPERTY INVESTORS L.P., a Texas limited partnership
	By: Fort Worth GP, Inc., a Delaware corporation, its General Partner
	By: Thomas H. Bjarnason, Vice President
PROVINCE OF ONTARIO §	
JUDICIAL DISTRICT OF YORK §	
TO WIT:	
This instrument was acknowledged before me on Bjarnason, Vice President of Fort Worth GP, Inc., a Investors L.P., on behalf of said limited partnership.	the 27 day of, 2011, by Thomas H. Delaware corporation, General Partner of FWD Property

Printed Name of Notary:

Alysha Christine Valenti

Notary Public in and for the Province of Ontario My commission expires at the pleasure of Her Majesty Form ROW-N-7 Rev. 5/2003 Page 4 of 5

LDJ PROPERTIES, LTD., a Texas limited partnership

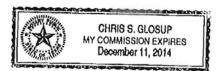
By: LDJ Management Company, L.L.C., a Texas limited liability company, its General Partner

Joan L. Germany, President

THE STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the Aday of May, 2011, by Joan L. Germany, President of LDJ Management Company, LLC, General Partner of LDJ Properties, Ltd., on behalf of said limited partnership.



Notary Public, State of Texas

Printed Name: CHRIS S. GLOSOF

My Commission Expires: 12.11-2014

MMSG LIMITED PARTNERSHIP, a Texas limited partnership

John D., Gourley, Managing Partner

THE STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on the \(\frac{1}{5} \) day of \(\frac{1}{5} \) \(\frac{1}{5} \) and \(\frac{1}{5} \) John D. Gourley, Managing Partner of MMSG Limited Partnership, on behalf of said limited partnership.



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Notary Public, State of Texas

Printed Name: He.d. 1 Wag ner

My Commission Expires: 10-22-2011

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	CTING BY AND THROUGH	H WILLIAMSON COUNTY, THIS THE
	Ву:	Dan A. Gattis, County Judge Jusa L. Birlaman Tresiding Commissioner
THE STATE OF TEXAS	§ §	
COUNTY OF WILLIAMSON	§ §	
L. B. Gattis, County Judge of William herein. Presiding Commis	nowledged before me on the son County, Texas, in the continuous	apacity and for the purposed consideration recited
	Printe	ry Public, State of Texas ed Name: Commission Expires:

After recording return to:

Don Childs Sheets & Crossfield, P.C. 309 East Main St. Round Rock, Texas 78664 (75)11) PE(

STATE OF TEXAS

COUNTY OF WILLIAMSON



EASEMENT

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

LEGAL DESCRIPTION

DESCRIPTION OF A 1.656 ACRE (72,117 SQUARE FEET) TRACT SITUATED IN THE BURRELL BAVES SURVEY, ABSTRACT 216, WILLIAMSON COUNTY, TEXAS AND BEING A PORTION OF A CALLED 417.81 ACRES TRACT AS DESCRIBED IN A WARRANTY DEED TO FWD PROPERTY INVESTORS L.P. AND RECORDED IN DOCUMENT NO. 2010037193 OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, AND BEING FURTHER DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNING at a 5/8-inch iron rod with aluminum cap stamped "TXDOT" found at the intersection of the proposed southwest right-of-way line of State Highway No. 195 (SH195), a varying width right-of-way, with the northwest line of said 417.81 acres tract, same being the southeast line of Lot A, Planned Unit Development of Sun City Georgetown, Sun City Boulevard Extension (East), a subdivision according to the plat of record in Cabinet FF, Slides 171-173 of the Plat Records of Williamson County, Texas, and from which a 1/2-inch iron rod with plastic cap stamped "RDS 4094" found in the existing southwest right-of-way line of SH195, a 100-feet wide right-of-way, for the north corner of said 417.81 acres tract, same being the east corner of said Lot A, bears N68°50'52"E a distance of 154.00 feet;

THENCE leaving said northwest line of the 417.81 acres tract and said southeast line of Lot A, crossing said 417.81 acres tract with said proposed southwest right-of-way line of SH195 the following five (5) courses and distances:

- with the arc of a curve to the left a distance of 1563.75 feet, said curve having a radius of 11,579.16 feet, a central angle of 07°44'16", and a chord bearing S55°59'37"E a distance of 1562.56 feet to a Texas Department of Transportation Type II Concrete Monument with Brass Disk (TxDOT Type II) found for an angle point,
- 2. \$55°39'58"B a distance of 273.32 feet to a TxDOT Type II monument found for an angle point,
- 3. \$59°51'42"B a distance of 300.00 feet to a TxDOT Type II monument found for an angle point,
- \$63°40'36"B a distance of 300.67 feet to a 1/2-inch iron rod with plastic cap stamped "Porest RPLS 1847" found for an angle point, and
- 5. S59°51'45"B a distance of 1166.47 feet to a 1/2-inch iron rod with plastic cap stamped "Forest RPLS 1847" found in the southeast line of said 417.81 acres tract, same being the northwest line of a called 326 acres tract as described in a Distribution Deed to Wilford C. Schneider, John B. Schneider, and Janis K. Johnson and recorded in Document No. 2010030325 of said Official Public Records of Williamson County, Toxas, and from which a 1/2-inch iron rod found in said existing southwest right-of-way line of SH195 for the east corner of said 417.81 acres tract, same being the north corner of said 326 acres tract, bears N59°47'54"B a distance of 161.48 feet;

THENCE with said southeast line of the 417.81 acres tract and said northwest line of the 326 acres tract, \$59°47'54"Wa distance of 23.02 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF BSMT" set;

THENCE leaving said southeast line of the 417.81 acres tract and said northwest line of the 326 acres tract, crossing said 417.81 acres tract the following five (5) courses and distances:

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Basement

- 1. N59°51'45"W a distance of 1154.41 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF BSMT" set for an angle point,
- 2. N63°40'36"W a distance of 300,67 feet to a 1/2-inch fron rod with plastic cap stamped "HALFF ESMT" set for an angle point,
- 3. N59°51'45"W a distance of 301.40 feet to a 1/2-inch iron rod with plastic cap stamped "HALFF BSMT" set for an angle point,
- 4. N55°39'58"W a distance of 273.32 feet to a to a 1/2-inch iron rod with plastic cap stamped "HALPP BSMT" set for non-tangent point or curvature to the right, and
- 5. with the arc of said curve to the right a distance of 1577.72 feet, said curve having a radius of 11,599.16 feet, a central angle of 07°47'36", and a chord bearing N55°57'44"W a distance of 1576.50 feet to a 1/2-luch iron rod with plastic cap stamped "HALFR ESMT" set in said northwest line of the 417.81 acres tract and said southeast line of Lot A;

THENCE with said northwest line of the 417.81 acres tract and said southeast line of Lot A, N68°50'52"E a distance of 23.32 feet to said POINT OF BEGINNING and containing 1.656 acre.

THE STATE OF TEXAS

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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 29th day of October

2010, A.D.

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

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-107-26903.dgn, dated October 29, 2010, 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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Easement

