

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS	§	Project No.: SH195
	§	Parcel No.: 110
COUNTY OF WILLIAMSON	§	CSJ No.: 0440-02-0112

This agreement, effective the _____ day of _____, 2011, between the State of Texas, acting by and through Williamson County, Texas (the "State"), and JOHN CAHILL AND DEBRA CAHILL(collectively 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. 195. 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 (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 of Texas 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 ONE HUNDRED EIGHTY SIX THOUSAND THREE HUNDRED THIRTY NINE and 00/100 Dollars (\$186,339.00). 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. The parties agree that the sum tendered represents 95 percent of the State's 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 Grantor(s) warrants and represents that the title to the Property is free and clear of all liens and encumbrances and that proper releases will be executed for the Property prior to funds being disbursed under this agreement. Grantors further warrant that no other person or corporation owns an interest in the fee title or has a leasehold interest or tenancy in 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 ninety (90) days of the effective date of this agreement, the State shall coordinate with the Grantor to set an agreed date for a Special Commissioners hearing to acquire fee title to the Property. The State will not unreasonably delay the 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 of the special commissioners' hearing in this matter.
6. This grant will not prejudice Grantor's rights to receive full and just compensation for the fee title or any easement 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. The State's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice Grantor(s) rights to any relocation benefits for which they may be eligible. This Agreement is only for purposes of giving the State possession of the property in exchange for the payment tendered to the Grantor pursuant to Paragraph Two above and shall be treated as such pursuant to Texas Rule of Evidence 408.
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. The State will remain responsible, however, for pre and post-judgment interest, if any, after the date of the filing of the special commissioners' award at the statutory amount as required by Texas law.
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. After the State takes possession of the Property, GRANTEE and GRANTOR shall either work with the Williamson Central Appraisal District to stop the accrual of taxes, or Williamson County shall be responsible for the payment of taxes for the Property during the time that it has exclusive possession of the Property for the purposes set out herein.
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 a Memorandum of this Agreement.

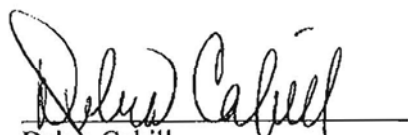
13. Other conditions: GRANTEE agrees that it will not take possession of the Property for the purposes set out in this Agreement prior to November 15, 2011. GRANTOR shall fully vacate the Property, including the removal of any personal property desired to be retained by GRANTOR or any Tenant, on or before November 15, 2011.

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 3 DAY OF October, 2011.

Grantors:


John Cahill


Debra Cahill

ACCEPTED AND AGREED TO BY THE STATE OF TEXAS, ACTING BY AND THROUGH WILLIAMSON COUNTY, THIS THE _____ DAY OF _____, 2011.

WILLIAMSON COUNTY, TEXAS

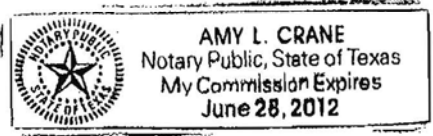
By: 
Dan A. Gattis, County Judge

Acknowledgement

State of Texas
County of Williamson

This instrument was acknowledged before me on October 3, 2011

by John Cahill, in the capacity and for the purposes and consideration recited herein.

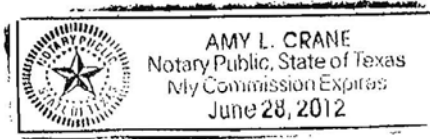


Amy L. Crane
Notary Public's Signature

State of Texas
County of Williamson

This instrument was acknowledged before me on October 3, 2011

by Debra Cahill, in the capacity and for the purposes and consideration recited herein.



Amy L. Crane
Notary Public's Signature

State of Texas
County of Williamson

This instrument was acknowledged before me on _____
by Dan A. Gattis, Williamson County Judge, 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