

POSSESSION AND USE AGREEMENT FOR UTILITY RELOCATION PURPOSES

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

This agreement, effective the 28 day of October, 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 CAHILL AND DEBRA CAHILL (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 (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 FIVE THOUSAND and 00/100 Dollars (\$5,000.00). 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 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(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 County from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.

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 that the County will comply with the Texas Property Code in submitting a good faith offer to Grantor(s). It is further understood that 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 determining the amount of just compensation for the easement interests in and to 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 in anyway Grantor's right to challenge the right to take, including but not limited to any jurisdictional defects, caused by the County's failure to comply with the Texas Property Code as agreed to in Paragraph 4 above. This grant will also 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. The County'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 County 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 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. The County 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 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, groundwater, 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, groundwater 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 a Memorandum of this Agreement.
13. Other conditions:

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:

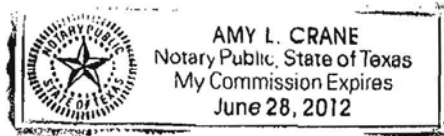
Don Childs
Sheets & Crossfield, P.C.
309 East Main St.
Round Rock, Texas 78664

Acknowledgement

State of Texas
County of Williamson

This instrument was acknowledged before me on October 28, 2011

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

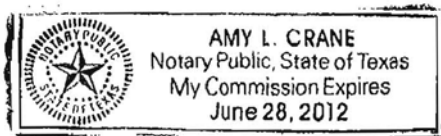


Amy L Crane
Notary Public's Signature

State of Texas
County of Williamson

This instrument was acknowledged before me on October 28, 2011

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



Amy L Crane
Notary Public's Signature

Grantors will be able to use the property for signage for their Christmas Tree business until the County takes the property pursuant to Paragraph 4 above.

14. 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.

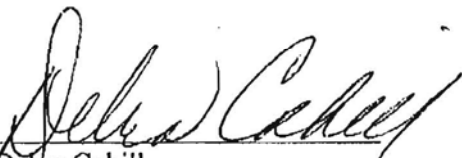
To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to Chisholm Trail Special Utility District and Pedernales Electric Cooperative, Inc, acting by and through Williamson County, and their assigns forever, for the purposes and subject to the limitations set forth above.

IN WITNESS WHEREOF, THIS INSTRUMENT IS EXECUTED ON THIS THE 28 DAY OF October, 2011.

Grantors:



John Cahill



Debra Cahill

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