

**RIGHT OF ENTRY, POSSESSION, USE AND  
CONSTRUCTION AGREEMENT**

**STATE OF TEXAS**

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**COUNTY OF WILLIAMSON**

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Nelson Homestead Family Partnership, Ltd. ("Owner"), is the owner of approximately 1703.451 +/- acres of land in Williamson County, Texas (the "Owner's Entire Tract") which is described in Exhibit "A" attached hereto and incorporated herein by reference.

Williamson County, Texas ("Licensee") has advised Owner that it intends to acquire fee simple title to approximately 0.192 acre (+-8,370 SF) of land out of Owner's Entire Tract which is described on Exhibit "B", attached hereto and incorporated herein by reference (the "Right of Way Parcel") for the purpose of constructing traffic signal control facilities for CR 110/University Blvd. and widening and improving CR 110 (the "Roadway Improvements") and constructing related appurtenances either by donation, purchase or, if Owner and Licensee are unable to agree on the terms of purchase, through condemnation. Licensee has also advised Owner that Licensee must have possession of the Right of Way Parcel at an earlier date than would be possible through formal condemnation proceedings in order to meet contractual and construction schedules for the Roadway Improvements.

Owner, as an accommodation to Licensee, is willing to allow Licensee to take possession of the Right of Way Parcel on the terms of this Agreement in recognition of the fact that Licensee is currently preparing final design and property descriptions required for proceeding with final right of way acquisitions for this section of the proposed Roadway Improvements.

Therefore, for good and valuable consideration, Owner and Licensee agree as follows:

1. Right of Entry. Upon execution of and subject to the terms of this Agreement, Licensee, its contractors and assignees may enter upon the Right of Way Parcel for the purpose of surveying, site review and analysis, utility relocation, and actual construction prior to the acquisition of fee title to the Right of Way Parcel through condemnation, donation, or purchase. All contractors or assignees of Licensee must provide Owner with proof of insurance complying with Paragraph 8 of this Agreement before entering onto the Right of Way Parcel. Licensee agrees to provide Owner with the name and the phone number of the project manager for each contractor before that contractor enters onto the Right of Way Parcel.

2. Licensee's Rights. Licensee will have the full and exclusive right, within the boundaries of the Right of Way Parcel, to control and use the Right of Way Parcel, including the right to remove improvements; to erect and maintain fencing, traffic and pedestrian control devices, and signs; the right to clear trees and vegetation and the right to excavate, trench, fill, and grade, construct utilities and roadways. Utility construction will include the relocation of water and wastewater lines, electrical lines, cable television lines, telephone lines, and gas lines and related facilities. Road construction will include the grading, cutting, and filling of the existing ground elevation; and construction of traffic signal and related control devices. Licensee and all of its contractors, assignees, utility relocation personnel, or other agents of any description, will confine their work to the Right of Way Parcel, and will not use or enter any portion of the Owner's Entire Tract, save and except the Right of Way Parcel (the "Remainder") for access or any other purpose. If Owner currently has access to service or is entitled to access to service from any utilities which are existing or which are constructed under the terms of this Agreement, Owner will be entitled to continue to receive or access such service from the existing and newly constructed utilities.

3. Plans to be Furnished. Licensee agrees to provide Owner with a copy of all plans and specifications for the Roadway Improvements as well as for any water line and/or wastewater line which Licensee or its assignees intend to construct within the Right of Way Parcel.

4. Grant Made without Prejudice; Reservation of Rights. This Agreement will not prejudice, in any way, Owner's right to receive full and just compensation for the Right of Way Parcel, including any improvements thereon. By entering into this Agreement, Owner does not waive any legal rights, causes of action, claims, demands or defenses under the Constitution of the United States, the Constitution and statutes of the State of Texas, the common law or any other provision of law or equity that Owner may have in connection with Licensee's exercise of its rights of eminent domain of the Right of Way Parcel, including Owner's right to contest procedural issues and any and all damages to and compensation for the Remainder. Owner expressly reserves, and does not waive, any claim it may have for damages if any activity permitted under this Agreement (i.e., channelization of existing grade to accommodate storm water runoff, grade separations, etc.) affects or creates a situation or condition that is detrimental to the value of the Remainder. Owner reserves the right to challenge, contest or appeal any aspect of the proceedings for acquisition, excluding only Licensee's authority to condemn. Neither party waives any of its legal rights, including any right to appeal or otherwise complain of any award by Special Commissioners or a court of competent jurisdiction. Owner expressly reserves fee title to the Right of Way Parcel, and the rights, and privileges granted by this Agreement will automatically terminate upon the closing of the sale of the Right of Way Parcel to Licensee and conveyance by Owner of the title to the Right of Way Parcel to Licensee, or the rendition of a final judgment in condemnation by a court of competent jurisdiction. This grant will, however, survive the termination of any purchase contract between Owner and Licensee or the institution of condemnation proceedings against the Right of Way Parcel.

5. Negotiation: Timing. Licensee agrees to negotiate with Owner in good faith with respect to the value of the Right of Way Parcel, the damage to the Remainder and any other related issues including access to and from the Remainder and across the proposed Roadway Improvements. If (i) Licensee fails to provide Owner with an initial purchase offer to acquire the Right of Way Parcel within 90 days from the date of this Agreement or (ii) the parties fail to reach an agreement within **60** days from the date that Licensee provides Owner with an initial purchase offer to acquire the property, Owner, at its option, at anytime thereafter, may notify Licensee that it desires that Licensee file a condemnation action and immediately ask the Court to appoint Special Commissioners and schedule a hearing at the earliest practical time. Licensee will initiate condemnation proceedings within 60 days of the date of delivery of such notice from Owner, and will schedule a hearing at the earliest possible date. Licensee covenants that it will not seek to delay or continue the hearing and will take all procedural steps necessary to ensure that the hearing is held in a timely manner without any delays caused by Licensee.

6. Date of Taking. For negotiation or condemnation purposes, Owner and Licensee agree to and hereby designate the date of taking (on which the value the Right of Way Parcel is to be determined, and any damages to the Remainder are to be assessed) as the date any award rendered by the Special Commissioners is deposited by Licensee in the registry of the court.

7. Deposit of Award. Licensee agrees to deposit the award of the Special Commissioners in the registry of the court within 60 days of the Special Commissioners' award is filed with the court. This Agreement will expire 60 days after the filing of a Special Commissioners' award covering all of the Right of Way Parcel and damages to the Remainder unless Licensee deposits the Special Commissioners' award by such date.

8. Liability; Insurance. Licensee will be liable for all damage or injury to persons or property resulting from the activities of Licensee, its agents, employees, assignees, contractors, subcontractors, or other parties in coming upon or about the Right of Way Parcel in connection with Licensee's activities upon the Right of Way Parcel. Licensee will obtain, and maintain in full force and effect, at all times during the term of this Agreement, and will require each of its contractors and assignees to obtain and maintain in effect at all times during which such contractors or assignees are performing work on or within the Right of Way Parcel, a policy or policies of insurance, in a minimum amount of \$1,000,000 per occurrence, insuring against liability for bodily injury, personal injury, death, or property damage, which will name Owner as an additional insured. This liability insurance will provide that it may not be canceled without at least 30 days written notice to Owner, and a certificate of insurance, confirming the required coverage, must be provided to Owner prior to Licensee or the contractor or assignee in question entering upon or commencing any construction activity on the Right of Way Parcel.

9. Use of Remainder; Damage to Other Property. Licensee acknowledges that Owner's Entire Tract is currently leased to Davidson Brothers and used for farming and livestock operations, and agrees that all activities on the Right of Way Parcel will be conducted in a manner in order to minimize interference with or interruption of such

operations, or access to the Remainder by Owner or any of its tenants. Licensee hereby acknowledges and agrees that the perimeter of Owner's Entire Tract needs to remain fenced at all times in order to keep livestock within the boundaries of Owner's Entire Tract. Prior to removing, cutting, modifying, or otherwise damaging any fence on Owner's Entire Tract, Licensee shall contact Owner and obtain its approval, which shall not be unreasonably withheld or delayed. In no event shall any fence located on Owner's Entire Tract be removed, cut, modified, or otherwise damaged by Licensee until alternate fencing of comparable construction and quality in is place to maintain the perimeter fencing of Owner's Entire Tract without any holes or gaps. Licensee will be responsible for either the immediate correction of, or prompt reimbursement of Owner for, any damage to any fencing, livestock, growing crops, or any property of Owner, its partners, its tenants, or their agents or employees caused by the activities of any of Licensee's assignees or contractors which are not authorized by the provisions of this Agreement.

10. Effect of Agreement. The grant will survive the termination of any purchase agreement and shall survive any institution of any condemnation proceedings relating to the Right of Way Parcel. This grant will terminate and merge into any negotiated sale of the Right of Way Parcel and/or any final judgment in connection with any condemnation proceeding.

11. Authority. The parties each represent and warrant to the other that the signatories to this Agreement have the requisite power and authority to enter into this Agreement, to perform their respective obligations hereunder, and to complete the transaction as contemplated by this Agreement. The parties have each taken all action, corporate and otherwise, necessary to authorize the execution and delivery of this Agreement and the performance of their respective obligations under this Agreement and to complete the transactions contemplated hereby.

12. Binding Effect. This Agreement will be binding upon the heirs, devisees, executors, administrators, legal representatives, successors, assigns, contractors and subcontractors of each of the parties.

13. Licensee shall be responsible for any and all costs, expenses or repairs related to or necessitated by any work performed in connection with the obligations set out in this Agreement or the Roadway Improvements including, without limitation, engineering, reimbursement for the cost of fencing installed by Owner between the boundary of the Right of way Parcel and the Remainder as shown on Exhibit "B", drainage work or repairs, septic system repairs, and well/waterline repairs.

*[signature pages follow]*

**OWNER:**

Nelson Homestead Family Partnership, Ltd.

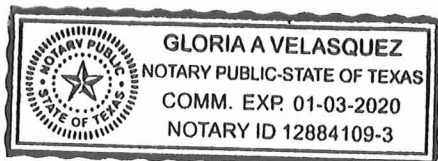
By: Nelson Homestead Management, L.L.C.

By: John C. Nelson  
John C. Nelson  
Manager

**ACKNOWLEDGMENT**

**STATE OF TEXAS  
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the 22 day of January, 2016 by John C. Nelson, in the capacity and for the purposes and consideration recited herein.



Gloria Velasquez  
Notary Public, State of Texas  
Printed Name: Gloria Velasquez  
My Commission Expires:

**LICENSEE:**

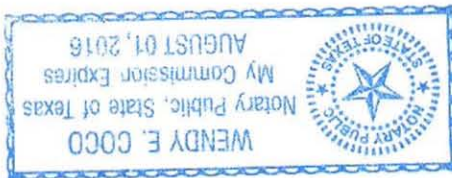
Williamson County, Texas

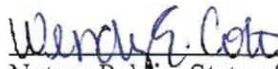
By: 

Dan A. Gattis, County Judge

**STATE OF TEXAS  
COUNTY OF WILLIAMSON**

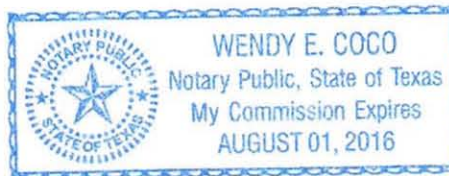
This instrument was acknowledged before me on this the 2nd day of February 2016 by Dan A. Gattis, Williamson County Judge, in the capacity and for the purposes and consideration recited herein.



  
Notary Public, State of Texas  
Printed Name: WENDY E. COCO  
My Commission Expires: 8/1/16

After recording return to:

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



## EXHIBIT "A"

The land described as "Owner's Entire Tract" is approximately 1703.451 acres of land, more or less, located in Williamson County, Texas, and more particularly described as two separate tracts of land as follows:

(a) 1629.95 acres of land, more or less, more particularly described in that certain Special Warranty Deed dated December 31, 1997 from Tom E. Nelson, Jr. and Nelson Homestead Management, LLC to Nelson Homestead Family Partnership, Ltd., and recorded as Document No. 9824078 in the Official Records of Williamson County, Texas, which Special Warranty Deed (including all exhibits thereto) is incorporated herein by reference for all purposes, SAVE AND EXCEPT: (i) two tracts of land totaling 35.674 acres of land, more or less, which property is more particularly described in that certain Special Warranty Deed dated November 21, 2002 and recorded as Document #2003002312 in the Official Public Records of Williamson County, Texas, (ii) a total of one and one-half (1.5) acres of land, more or less, described in that certain Donation Special Warranty Deed from Nelson Homestead Family Partnership, Ltd. to Williamson County, Texas dated January 17, 2012 and recorded as Document No. 2012004203 in the Official Public Records of Williamson County, Texas, and (iii) 0.395 acres, more or less, described in that certain Right of Way Deed from Nelson Homestead Family Partnership, Ltd. to Taylor Morrison of Texas, Inc., dated December 16, 2013, and recorded as Document No. 2013116367 in the Official Public Records of Williamson County, Texas; and

(b) 111.07 Acres of land, more or less, being all of the land located north of Williamson County Road 112 out of a parent tract of land containing 868.54 acres of land, more or less, which parent tract is more particularly described in that certain Special Warranty Deed dated December 31<sup>st</sup>, 1997 from Tom E. Nelson, Jr., Tom E. Nelson, III, Rebecca B. Nelson and John C. Nelson to Nelson Homestead Family Partnership, Ltd., and recorded as Document No. 9824076 in the Official Records of Williamson County, Texas, which Special Warranty Deed (including all exhibits thereto) is incorporated herein by reference for all purposes.



EXHIBIT B



PROPOSED SIGNAL POLE  
UNDERGROUND CONDUIT

PUBLIC USE AGREEMENT  
AREA NEEDED  
APPROXIMATELY 8,370 SF

PROPOSED SIGNAL CABINET

new fencing along  
PUA boundary

EXISTING ROW

PROPOSED ROW

9M-E  
PART 1

9M  
PART 1

PROPOSED 15' EASEMENT

CR 110

UNIVERSITY

CR 110

CR 110  
PARCEL 9  
NELSON HOMESTEAD FAMILY  
PARTNERSHIP LTD.  
1"=100'