POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

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| **STATE OF TEXAS** | **§** | ROW CSJ: |  |
|  | **§** | Parcel ID: |  |
| **COUNTY OF** | **§** | Project No.: |  |

This Possession and Use Agreement For Transportation Purposes (the “Agreement”) between the State of Texas, acting by and through the Texas Department of Transportation (the “State”), and       (the “Grantor” whether one or more), grants to the State, its contractors, agents and all others deemed necessary by the State, an irrevocable right to possession and use of the Grantor’s right to use the property, defined below, for the purpose of constructing a portion of Highway No.       (the “Highway Construction Project”). The property subject to this Agreement is described more fully in signed and sealed property description 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 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the State of Texas the right of entry and exclusive possession and use of the Property for the purpose of constructing a highway and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Highway Construction Project. This Possession and Use Agreement will extend to the State, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the State in the future, and all others deemed necessary by the State for the purpose of the Highway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the State will tender to the Grantor the sum of       Dollars ($     ) (Initial Payment). The Initial Payment shall be made by the State within thirty (30) days of the date this agreement is fully executed by both parties. The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. After Grantor vacates the Property, as further described in Paragraph 12 below, the State will grant an additional       Dollars ($     ). The parties agree that the Initial Payment represents the estimated cost to cease its current pipeline operations and re-establish Grantor’s current pipeline operations at a location outside of the Property, currently estimated at $     . The additional $      represents just compensation to fully remove all pipeline facilities under pavement. The parties agree that the State is required to pay just compensation for the Property and agree that such compensation shall equal Grantor’s actual costs to cease its current operations and to remove its facilities from the easement and crossing at a value not to exceed $     . The work for Grantor to shut down production and remove operations of its pipeline is generally described on the attached Exhibit “B” (this is not an exhaustive list and the actual work shall include all items that Grantee determines to be necessary or appropriate as a prudent operator). The State shall pay to Grantor its actual costs to cease operations and remove its pipeline within forty-five (45) days after Grantor has completed work and provide the State with photographs documenting the removal.
3. The effective date of this Agreement will be the date on which payment of the Initial Payment pursuant to Paragraph 2 above was tendered to the Grantor by the State, (the “Effective Date”).
4. The Grantor warrants and represents that its interest in the Property is free and clear of all liens and encumbrances created by, through or under Grantor, but not otherwise, or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property created by, through or under Grantor, but not otherwise provided; however, this conveyance is made and accepted subject to all easements, rights of way, leases, reservations, mineral severances, covenants, conditions, restrictions and other title exceptions which are filed of record or are visible or apparent on the ground. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property.
5. The parties agree that the valuation date for determining the amount of just compensation for the property to be acquired by the State for negotiation purposes, will be the Effective Date of this Agreement; provided, however, that the compensation for Grantor to cease its current pipeline operations and remove its pipeline operations shall not exceed $     .
6. This Agreement is made with the understanding that the State will continue to proceed with acquisition of the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor’s rights to receive full and just compensation as allowed by law for all of the Grantor’s interests in and to the Property to be acquired by the State, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor’s interest in any larger tract of which the Property is a part (the “Remainder”), if any; all as the Property exists on the Effective Date of this Agreement. 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 the Grantor’s rights to any relocation benefits for which Grantor may be eligible.
7. The purpose of this Agreement is to allow the State to proceed with its Highway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the State’s acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Highway Construction Project is for a valid public use.
8. The Grantor reserves all of the oil, gas and Sulphur in and under the land herein conveyed but waives 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. 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.
9. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the State takes title to the Property.
10. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
11. It is agreed the State will record this document.
12. Other conditions:      .

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.

GRANTOR:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(if GRANTOR is an entity other than an individua l person) Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(if GRANTOR is an entity other than an individua l person) Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**THE STATE OF TEXAS**

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By:

      Right of Way Manager

Date:

**Acknowledgment**

State of Texas

County of

This instrument was acknowledged before me on by . The acknowledging person personally appeared by:

physically appearing before me.

appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C.

Notary Public's Signature

**Business Entity Acknowledgment**

State of Texas

County of

This instrument was acknowledged before me on by , of , a , on behalf of said business entity. The acknowledging person personally appeared by:

physically appearing before me.

appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code, Chapter 406, Subchapter C.

Notary Public's Signature