



**POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES
WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION**

STATE OF TEXAS	§	ROW CSJ: 0101-06-109
	§	Parcel No.: 321(AC)
COUNTY OF NUECES	§	Project No.: HP:X597(1)

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 City of Corpus Christi, a Texas Municipal Corporation (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 property for the purpose of constructing a portion of US 181 (the “Highway Construction Project”). The property subject to this Agreement is described more fully in field notes and plat map (attached as “Exhibit A” and “Exhibit B”) and made a part of this Agreement by reference (the “Property”).

1. For the consideration paid by the State which is set forth in Paragraphs 2 and 3 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 Zero Dollars (\$0.00). The Grantor 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 0 percent of the State's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the State’s determination of the just compensation owed to the Grantor for the real property 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 the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners’ award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the State has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the State, the Grantor will

promptly refund the overpayment to the State.

3. As additional consideration, the State will tender to the Grantor the sum of Three Thousand and No/100 Dollars (\$3,000.00), the receipt and sufficiency of which is acknowledged. The parties agree that the sum tendered under this Paragraph 3:
 - (i) is independent consideration for the possession and use of Grantor's Property and represents no part of the State's compensation to be paid for the anticipated purchase of the Property; and
 - (ii) will not be refunded to the State upon any acquisition of the Property by the State.
4. The effective date of this Agreement will be the date on which payment pursuant to Paragraphs 2 and 3 above was tendered to the Grantor by the State, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
5. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the State from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
6. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the State in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
7. This Agreement is made with the understanding that the State will continue to proceed with acquisition of a real property interest in 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.
8. In the event the State institutes or has instituted eminent domain proceedings, the State will not be liable to the Grantor 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.
9. 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 and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the

Highway Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

10. 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.
11. 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.
12. Notwithstanding the acquisition of right of possession to the Property by the State in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the State acquires title to the Property either by negotiation, settlement, or final court judgment.
13. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
14. It is agreed the State will record this document.
15. Other conditions: None.

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:

City of Corpus Christi,
a Texas Municipal Corporation

BY: _____
Valerie H. Gray, P.E.
Executive Director of Public Works

Corporate Acknowledgment

State of Texas
County of Nueces

This instrument was acknowledged before me on _____, 2018, by Valerie H. Gray, P.E., as Executive Director of Public Works of the City of Corpus Christi, Texas, a Texas Municipal Corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

APPROVED AS TO LEGAL FORM, THIS _____ DAY OF _____, 2018.

FOR THE CITY ATTORNEY

By: _____
Assistant City Attorney
CITY LEGAL DEPARTMENT

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: _____
Gabriel Lopez, Right of Way Supervisor

Date: _____

EXHIBIT "A"

A tract of land, situated in the Enriquez Villareal Survey, Abstract Number 1, Nueces County, Texas, being Lot 1, Block 40 of the Hillcrest Addition as described in a document for the City of Corpus Christi and recorded in Document No. 2003035790, Official Public Records, Nueces County, Texas (O.P.R.N.C.T.) dated July 9, 2003 and shown by plat thereof, recorded in Volume 62, Pages 175, Map Records, Nueces County, Texas (M.R.N.C.T.), dated February 21, 2003.



EXHIBIT "B"

County: Nueces
Highway: US 181
RCSJ: 0101-06-109
Project Limits: From Beach Avenue
To Morgan Avenue at Crosstown Expressway

Page 1 of 3
Dated: July 10, 2017
Revised: August 4, 2017

Property Description for Parcel 321(AC)

Being a description of an "Access Denial Line" delineating an access of denial to the transportation facility from the abutting property along the common boundary of Interstate Highway 37 to a portion of a tract of land, situated in the Enriquez Villareal Survey, Abstract Number 1, Nueces County, Texas, being Lot 1, Block 40 of the Hillcrest Addition as described in a document for the City of Corpus Christi and recorded in Document No. 2003035790, Official Public Records, Nueces County, Texas (O.P.R.N.C.T.) dated July 9, 2003 and shown by plat thereof, recorded in Volume 62, Pages 175, Map Records, Nueces County, Texas (M.R.N.C.T.), dated February 21, 2003. Metes and bounds description of said "Access Denial Line" is as follows:

BEGINNING at a 5/8 inch diameter iron rod with 2 inch aluminum cap stamped "Access Denial Point" set on the South line of said City of Corpus Christi tract, also being on the existing North right-of-way of Interstate Highway 37 (variable width right-of-way), said 5/8 inch diameter iron rod with 2 inch aluminum cap stamped "Access Denial Point" being 210.01 feet right of Engineer's Baseline Station 53+93.70, and having State Plane Coordinates of N=17,180,665.09, E=1,334,196.31, from which a TxDOT TY II concrete monument found bears South 89 deg. 21 min. 28 sec. East, a distance of 77.51 feet for the Southeast corner of said City of Corpus Christi tract also being at the intersection of the existing South right-of-way of Noakes Street (50 foot right-of-way) and the existing North right-of-way of Interstate Highway 37 (variable width right-of-way), said 5/8 inch diameter iron rod with 2 inch aluminum cap stamped "Access Denial Point" being the East end of said "Access Denial Line";

- (1) **THENCE**, North 89 deg. 21 min. 28 sec. West, along said "Access Denial Line", the existing North right-of-way line of Interstate Highway 37 and the South line of said City of Corpus Christi tract a distance of 132.34 feet to a TxDOT Type II concrete monument found for the West end of this "Access Denial Line", said monument being 210.09 feet right of the Engineer's Baseline Station 55+26.04, and having State Plane Coordinates of N=17,180,666.57, E=1,334,063.98. The total length of the herein described "Access Denial Line" being 132.34 feet.



EXHIBIT "B"

County: Nueces
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Page 2 of 3
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All bearings and coordinates are based on the Texas Coordinate System, South Zone (4205), NAD 1983 (93). Due to the combined surface adjustment factor of 1.00000 the distances and coordinate values of surface and grid are equal. All distances are based on U.S. Survey Feet.

Access is prohibited across the "Access Denial Line" to the transportation facility from the adjacent property, in areas where access is not specifically denied as shown or described hereon access may be permitted in accordance with Access Management Manual guidelines.

A parcel plat of even date was prepared in conjunction with this property description.

This survey was performed on the ground under my supervision during February, 2017.



8-4-17

Bennie L. Galvan
Registered Professional Land Surveyor
License No. 5229, State of Texas
CivilCorp, LLC - 4611 E. Airline Suite #300, Victoria, Texas 77904
361-570-7500
Texas Firm Registration No. 100576-00



LEGEND

- FOUND TxDOT TYPE II MONUMENT
- SET TxDOT TYPE II MONUMENT
- FOUND 5/8" IRON ROD WITH PLASTIC CAP STAMPED "CDS/WBERT S.A. TX."
- ⊙ FOUND 5/8" IRON ROD WITH ALUMINUM CAP STAMPED "ACCESS DENIAL POINT"
- ⊕ SET 5/8" IRON ROD WITH ALUMINUM CAP STAMPED "PROPERTY CORNER"
- ⊖ SET 5/8" IRON ROD WITH ALUMINUM CAP STAMPED "ACCESS DENIAL POINT"
- ⊗ FOUND 5/8" IRON ROD WITH 3" ALUMINUM TxDOT CAP
- △ SET 5/8" IRON ROD WITH 3" ALUMINUM TxDOT CAP
- FOUND 1/2" IRON ROD WITH BMS CAP

- REF. CNR. REFERENCE CORNER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCING
- D.R.N.C.T. DEED RECORDS NUECES COUNTY, TEXAS
- O.R.N.C.T. OFFICIAL RECORDS NUECES COUNTY, TEXAS
- O.P.R.N.C.T. OFFICIAL PUBLIC RECORDS NUECES COUNTY, TEXAS
- D.T.R.N.C.T. DEED OF TRUST RECORDS NUECES COUNTY, TEXAS
- M.R.N.C.T. MAP RECORDS NUECES COUNTY, TEXAS
- ACCESS DENIAL LINE (A.D.L.)
- PROPOSED ALIGNMENT
- SURVEY LINE
- EXISTING RIGHT OF WAY
- PROPOSED RIGHT OF WAY

NOTES:

1. UTILITIES ARE SHOWN IN APPROXIMATE LOCATIONS. TEXAS ALL BEARINGS AND COORDINATES ARE BASED ON THE NAD 83 DATUM. THE SURFACE OF THE GROUND IS NOT SHOWN. THE DISTANCES AND COORDINATE VALUES OF SURFACE AND GRID ARE EQUAL. ALL DISTANCES ARE BASED ON (US SURVEY FEET).
2. ACCESS IS PROHIBITED ACROSS THE "ACCESS DENIAL LINE" TO THE TRANSPORTATION FACILITY FROM THE ADJACENT PROPERTY. IN AREAS WHERE ACCESS IS NOT SPECIFICALLY DENIED AS SHOWN OR DESCRIBED HEREON ACCESS MAY BE OBTAINED IN ACCORDANCE WITH ACCESS MANAGEMENT MANUAL GUIDELINES.
3. A PROPERTY DESCRIPTION OF EVEN DATE WAS PREPARED IN CONJUNCTION WITH THIS PARCEL PLAT.

I HEREBY CERTIFY THIS SURVEY WAS PERFORMED ON THE GROUND AND THIS PLAT CORRECTLY REPRESENTS THE FACTS FOUND AT THE TIME OF THE SURVEY, FEBRUARY 2017.

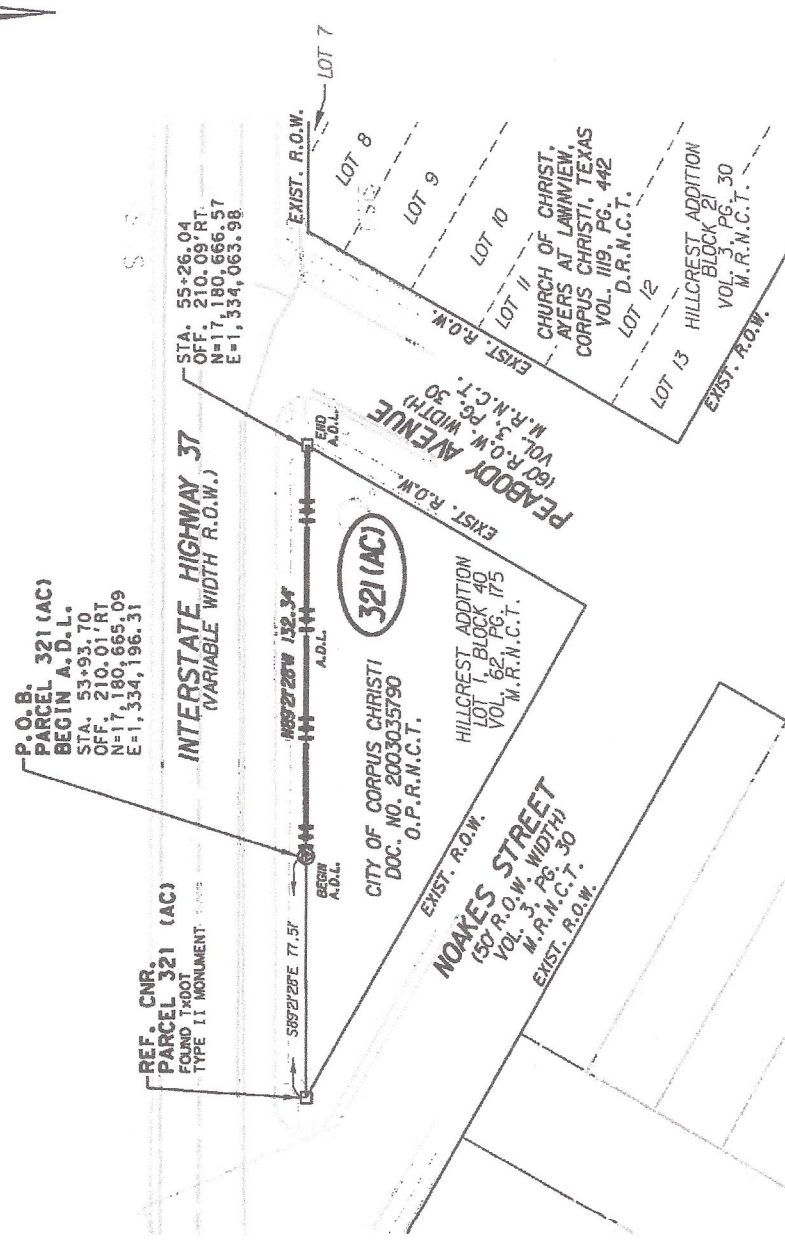
Bennie L. Galvan

BENNIE L. GALVAN RPLS#5229

TEXAS Department of Transportation

DISTRICT 16	SURVEY PLAT OF	COUNTY
CORPUS CHRISTI	PARCEL 321 (AC)	NUECES
0101-06-110		HWY. NO.
0101-C-54-4	US 181-HARBOR BRIDGE	US 181
0101-06-055		

ROW TAKING 0.0000 ACRES (0,000 SF) PAGE 3 OF 3



8-4-17



ENRIQUEZ VILLAREAL ABSTRACT 1

** THE MONUMENT DESCRIBED AND SET MAY BE REPLACED WITH A TxDOT TYPE II RIGHT-OF-WAY MARKER UPON COMPLETION OF THE HIGHWAY CONSTRUCTION PROJECT UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL LAND SURVEYOR, EITHER EMPLOYED OR RETAINED BY TxDOT.