

THE STATE OF TEXAS

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COUNTY OF FORT BEND

POSSESSION AND USE AGREEMENT

THIS POSSESSION AND USE AGREEMENT (the "Agreement") is entered into by and between Fort Bend County, Texas (hereinafter referred to as "the County"), a body corporate and politic acting herein by and through its Commissioners Court and Brian Keith Thomas, (hereinafter referred to as "Owner"), an irrevocable right to possession and use of the Owner's property for the purpose of construction for the expansion of South Post Oak Blvd (the "Project"). The property subject to this Agreement is described more fully in Exhibit "A," and made a part of this Agreement by reference (the "Property"). The County and the Owner may be individually referred to as a "Party" or collectively as the "Parties."

1. The County is seeking to negotiate the County's acquisition of the Property. In order to expedite and facilitate the necessary work to complete the Project, the County desires that the Owner provides the County the right of entry and exclusive possession and use of the Property for the purpose of constructing a public roadway 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 Project. This Agreement will extend to the County, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the County in the future, and all others deemed necessary by the County for the purpose of the Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. This Agreement is made with the understanding that the County will continue to proceed with acquisition of a real property interest in the Property.
3. The County will be entitled to take possession and use of the Property upon full execution of the Agreement.
4. The Owner warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the County from all unreleased or undisclosed liens affecting the Property.

The above made warranties are made by Owner and accepted by the County subject to the following:

- A. Visible and apparent easements not appearing of record;
- B. Any discrepancies, conflicts or shortages in area or boundary lines or any encroachments or any overlapping of improvements which a current survey would show; and



- C. Easements, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances and encumbrances for taxes and assessments (other than liens and conveyances) presently of record in the Official Public Records of Fort Bend County, Texas, that affect the property, but only to the extent that said items are still valid and in force and effect at this time.
- 5 In the event the County institutes eminent domain proceedings, following provisions shall apply:
- A. The Owner expressly acknowledges that the proposed Project is for a valid public use and voluntarily waives any right the Owner 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 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.
 - B. The County will not be liable to the Owner 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.
 - C. The Owner reserves all rights of compensation for the title and interest in and to the Property which the Owner holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Owner's rights to receive full and just compensation as allowed by law for all of the Owner's interests in and to the Property to be acquired by the County, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Owner'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 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 Owner in eminent domain proceedings. There will be no project impact upon the appraised value of the Property.
 - D. This Agreement shall continue to remain in effect until the County acquires title to the Property either by negotiation, settlement, or final court judgment.
- 6 The Owner 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 geologic al stability of the surface. Nothing in this reservation will affect the title and rights of the County to take and use all other minerals and materials thereon, and thereunder.
- 7 The undersigned Owner 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 County takes title to the Property.
- 8 This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this

Agreement to be effective on the date executed by the County.

EXECUTED this the 5 day of February, 2021.

Brian Keith Thomas

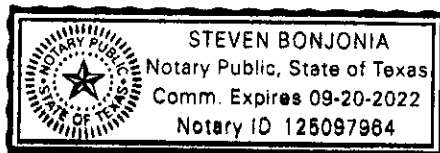
By: Brian K. Thomas

THE STATE OF TEXAS §
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COUNTY OF FORT BEND §

This instrument was acknowledged before me on this 5 day of February, 2021, by Brian Keith Thomas.

St Benjamin
Notary Public, State of Texas

(NOTARY SEAL)



AGREED to and ACCEPTED on this the 23 day of February, 2021.

FORT BEND COUNTY, a body corporate and politic under
the laws of the State of Texas

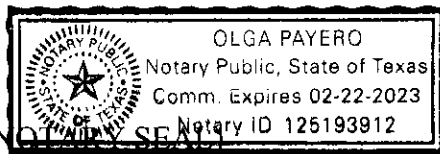
By: KP George
KP George, County Judge

THE STATE OF TEXAS

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COUNTY OF FORT BEND

This instrument was acknowledged before me on this 23 day of February,
2021, by KP George, County Judge of Fort Bend County, Texas, a body corporate and politic under
the laws of the State of Texas, on behalf of said body corporate and politic.



OPayero
Notary Public, State of Texas

EXHIBIT A

Legal Description and Map

EXHIBIT "A"

County: Fort Bend
Street: South Post Oak Boulevard
Civilcorp Job No.: 1520100

Page 1 of 2

Property Description for Tract 4

Being a 0.0249 acre (1,083 square feet) tract of land, situated in the Thomas Gleason Survey, Abstract 184, Fort Bend County, Texas, and being out of a portion of the South 1/2 of Tract 2, Block 678 of Magnolia Place, an addition to the City of Fresno, Fort Bend County, Texas as recorded in Volume 2, Page 6, Plat Records Fort Bend County, Texas (P.R.F.B.C.T.), said 0.0249 acre tract being a portion of that same tract of land described as being the South 1/2 of Tract 2 and Tract 8, Block 678 of said Magnolia Place by virtue of the Certified Copy of Probate Proceedings for Sam Diamond, Deceased, conveyed to Beverly Rudy, Executrix of the Estate of Sam Diamond and Esther Diamond, dated October 23, 1984, as recorded in Volume 2226, Page 183, Official Public Records Fort Bend County, Texas (O.P.R.F.B.C.T.), said 0.0249 acre tract of land being more fully described by metes and bounds as follows:

COMMENCING from a 5/8 inch diameter iron rod with cap stamped "Laney 1718" found marking the southeast corner of Tract 10 and the northeast corner of Tract 11, Block 678 of said Magnolia Place;

THENCE, South 86 deg. 59 min. 32 sec. West, with the common line of said Tract 10 and Tract 11, passing at a distance of 262.8 feet, the common corner of Tracts 4, 5, 10 and 11, and continuing with the common line of Tract 4 and Tract 5, for an overall distance of 526.07 feet a calculated point for the southeast corner Tract 4 and the northwest corner of Tract 5, Block 678 of said Magnolia Place, said point also being in the existing East right-of-way line of South Post Oak Boulevard (70 foot right-of-way);

THENCE, North 03 deg. 00 min. 28 sec. West, with the common line of said Tract 4 and the existing East right-of-way line of South Post Oak Boulevard, passing at a distance of 110.00 feet the common corner of said Tract 4 and Tract 3, and continuing for an overall distance of 220.00 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the northwest corner of Tract 3 and the southwest corner of Tract 2, Block 678 of said Magnolia Place and being the southwest corner of the herein described 0.0249 acre tract, said iron rod having Surface Coordinates of N=13,757,596.58, E=3,092,450.24, and being the **POINT OF BEGINNING**;

- (1) **THENCE**, North 03 deg. 00 min. 28 sec. West, with the common line of said Tract 2 and the existing East right-of-way line of South Post Oak Boulevard, a distance of 36.38 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the northwest corner of the herein described tract, said iron rod also being the northwest corner of said Beverly Rudy tract, same being the southwest corner of that certain tract of land described as being the North 1/2 of Lot 2 and Lot 8, Block 678 of said Magnolia Place as conveyed to Adriana Lara as recorded in Clerk File Number (C.F. No.) 2010043005, of the O.P.R.F.B.C.T.;

EXHIBIT "A"

County: Fort Bend
Street: South Post Oak Boulevard
Civilcorp Job No.: 1520100

Page 2 of 2

Property Description for Tract 4

- (2) **THENCE**, North 86 deg. 19 min. 56 sec. East, with the common line of said Beverly Rudy tract and said Adriana Lara tract, a distance of 29.68 feet to a calculated point for the northeast corner of the herein described tract, said calculated point being in the proposed East right-of-way line of South Post Oak Boulevard;
- (3) **THENCE**, South 02 deg. 53 min. 56 sec. East, with the proposed East right-of-way line of South Post Oak Boulevard, severing said Beverly Rudy tract, a distance of 36.72 feet to a 5/8 inch diameter iron rod with yellow plastic cap stamped "CIVILCORP" set for the southeast corner of the herein described tract, same being in the common line of Tract 2 and Tract 3, Block 678 of said Magnolia Place;
- (4) **THENCE**, South 86 deg. 59 min. 32 sec. West, with the common line Tract 2 and Tract 3, Block 678, of said Magnolia Place, distance of 29.61 feet to the **POINT OF BEGINNING**, containing 0.0249 acres (1,083 square feet) of land, more or less;

All bearings and coordinates are based on the Texas Coordinate System, South Central Zone (4204) NAD83. All distances and coordinates shown are surface and may be converted to grid by dividing by a combined adjustment factor of 1.000130.

I hereby certify the foregoing legal description was prepared from a survey performed on the ground and that it correctly represents the facts found at the time of the survey. A survey plat of even date herewith accompanies this legal description.



A handwritten signature in black ink that reads "Brandon Absher".

Brandon M. Absher
Registered Professional Land Surveyor
License No. 6654, State of Texas
CivilCorp, LLC - 4611 E. Airline Suite #300, Victoria, Texas 77904
361-570-7500
TBPLS Firm Registration No. 100576-00

Date: 03/08/2018

THOMAS GLEASON SURVEY ABSTRACT 184

MAGNOLIA PLACE
BLOCK 678
VOL. 2, PG. 6
P.R.F.B.C.T.

NORTH 1/2 LOT 2 AND LOT 8
BLOCK 678

ADRIANA LARA
C.F. NO. 2010043005
O.P.R.F.B.C.T.
MAY 10, 2014

SOUTH 1/2 TRACT 2 AND TRACT 8
BLOCK 678

S02°53'56"E 36.72'

4
0.0249 ACRES
(1,083 SQ.FT.)

BEVERLY D. RUDY, EXECUTRIX OF THE ESTATES OF SAM
DIAMOND AND ESTHER DIAMOND
VOL. 2226, PG. 183
O.P.R.F.B.C.T.
OCTOBER 23, 1984

P.O.B.
TRACT 4
N=13,757,596.58
E=3,092,450.24

SOUTH POST OAK BOULEVARD
(70' WIDTH R.O.W.)

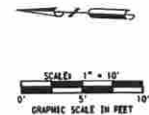
HENRY HERNANDEZ, ET UX
C.F. NO. 1975282026
D.R.F.B.C.T.
SEPTEMBER 16, 1975

MAGNOLIA PLACE
BLOCK 678
VOL. 2, PG. 6
P.R.F.B.C.T.

P.O.C.
TRACT 4
5/8" IRON ROD
WITH CAP STAMPED
"LANEY 1718"

WAYNE E. CLAYTON
TRACT 5
TRACT 6
C.F. NO. 8819848
O.R.F.B.C.T.
APRIL 15, 1988

TRACT 5
MAGNOLIA PLACE
BLOCK 678
VOL. 2, PG. 5
P.R.F.B.C.T.



LEGEND

- TRACT NUMBER
- SET 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CIVILCORP"
- FOUND MONUMENT (AS NOTED)
- CALCULATED POINT
- R.O.W. RIGHT-OF-WAY
- P. PROPERTY LINE
- S. SURVEY/ABSTRACT LINE
- F. FEE HOOK
- F.B.C.T. FORT BEND COUNTY, TEXAS
- P.R.F.B.C.T. PLAT RECORDS FORT BEND COUNTY, TEXAS
- O.R.F.B.C.T. OFFICIAL RECORDS FORT BEND COUNTY, TEXAS
- D.R.F.B.C.T. DEED RECORDS FORT BEND COUNTY, TEXAS
- O.P.R.F.B.C.T. OFFICIAL PUBLIC RECORDS FORT BEND COUNTY, TEXAS
- C.F. NO. CLERK FILE NUMBER
- P.O.C. POINT OF COMMENCING
- P.O.B. POINT OF BEGINNING
- (NXX°XX'XX"E XXX.XX') RECORD BEARING & DISTANCE

NOTES:
1. ALL BEARINGS AND COORDINATES SHOWN HEREON ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83. ALL COORDINATES AND DISTANCES SHOWN HEREON ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY A COMBINED ADJUSTMENT FACTOR OF 1.000130 (FORT BEND COUNTY).

2. A PROPERTY DESCRIPTION OF EVEN DATE WAS PREPARED IN CONJUNCTION WITH THIS PLAT.

3. ACCORDING TO THE FLOOD INSURANCE RATE MAP (FIRM) FOR THE CITY OF FRESNO, FORT BEND COUNTY, TEXAS, COMMUNITY PANEL NUMBER 48157C 0315 L, MAP REVISED APRIL 2, 2014, THE SUBJECT PROPERTY IS LOCATED IN ZONE X WHICH IN THIS CASE IS NOT A SPECIAL FLOOD HAZARD AREA.



TRACT 4
SOUTH POST OAK BOULEVARD
FORT BEND COUNTY

SCALE	JOB NUMBER	DATE	DEARTH
1" = 10'	1520100	3/8/2018	1 OF 1

THE UNDERSIGNED HEREBY CERTIFIES:
THAT THIS SURVEY WAS MADE ON THE GROUND IN APRIL OF 2017, UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNED: Brandon M. Absher
BRANDON M. ABSHER
REGISTERED PROFESSIONAL LAND SURVEYOR
TEXAS NO. 6654



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Laura Richard

Laura Richard, County Clerk

Fort Bend County Texas

February 26, 2021 03:18:42 PM

FEE: \$0.00

DP2

2021030291

