

STATE OF TEXAS

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COUNTY OF FORT BEND

**ORDER AUTHORIZING THE EXECUTION OF  
RIGHT OF ENTRY AND POSSESSION**

On this 12 day of September, 2023, the Commissioners Court of Fort Bend County, Texas being convened at a regular meeting of the Court, sitting as the governing body of Fort Bend County, upon motion of Commissioner Morales, seconded by Commissioner Meyers, duly put and carried, **IT IS HEREBY ORDERED** that:


The County Attorney is hereby authorized to negotiate a Right of Entry and Possession pursuant to the terms set forth in Exhibit A attached hereto and incorporate herein by reference in the matter of:

**PROJECT:** State Highway 99 Project, #17304  
**PRECINCT:** Precinct 1  
**PARCEL:** Parcel No. 101


The County Judge is hereby authorized to execute and deliver the Right of Entry and Possession for approval by the County Attorney in the above-referenced matter

Funds will be charged to **MOBILITY BONDS**.

**ATTEST**

  
 Laura Richard  
 Fort Bend County Clerk

**FORT BEND COUNTY**

  
 K.P. George  
 Fort Bend County Judge



## **Attachment**

## RIGHT OF ENTRY AND POSSESSION

STATE OF TEXAS

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COUNTY OF FORT BEND

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This Right of Entry and Possession (the "Agreement") is made, dated, and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date") by and between Fort Bend County, Texas ("Grantee") and Westpark 99 Holdings, LLC ("Grantor").

### RECITALS

**WHEREAS**, Grantor owns real property located in Fort Bend County, Texas as depicted in Exhibit A hereto (the "Property"); and

**WHEREAS**, Grantee is a body corporate and politic, existing and operating as a political subdivision of the State of Texas, duly vested with the right and power of eminent domain; and

**WHEREAS**, pursuant to that power, Grantee is proceeding with the acquisition of fee simple title in and to the Property in connection with a public project known as the State Highway 99 Project, #17304 (the "Project"); and

**WHEREAS**, the Project will consist of, but not be limited to, the construction, operation, and maintenance of a public roadway, associated appurtenances, and associated storm water drainage and detention facilities (the "Facilities"); and

**WHEREAS**, Grantee intends to exercise its power of eminent domain and initiate a condemnation proceeding to acquire fee simple title in and to the Property in the Fort Bend County Courts at Law (the "Proceeding"); and

**WHEREAS**, Grantor and Grantee have agreed on terms for partial settlement of the Proceeding prior to its filing and, in conjunction therewith, enter into this Agreement.

**NOW, THEREFORE, KNOWN ALL BY THESE PRESENTS** that for good and valuable consideration Grantor does hereby:

- **GRANT** and **CONVEY** unto Grantee and its contractors, consultants, agents, assigns, and others Grantee deems necessary to construct and maintain the Facilities, the irrevocable right to enter into possession of the Property and proceed with the construction and maintenance of the Facilities, and the possession and use of the Property, consistent with and subject to the terms set forth in this Agreement; and
- **STIPULATE** and **AGREE** that Grantee has the right to take the Property and will not contest, dispute, or interfere with that right in any way as expressed in the terms set forth in Paragraph 3 of this Agreement.

## TERMS

The execution of this Agreement is conditioned upon the following:

1. **Initial Compensation:** In conjunction with the execution of this Agreement, Grantee shall pay Grantor an initial sum of TWO MILLION EIGHT HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED AND FOUR AND NO/100 DOLLARS (\$2,833,504.00). This amount represents the total sum offered by Grantee to acquire the Property from Grantor voluntarily.

The parties agree that this amount will be deducted from any final settlement amount or judgment amount to be paid for the acquisition of the Property. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount Grantee has paid as initial compensation, Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from Grantee, Grantor will promptly refund the overpayment to Grantee.

2. **Additional Compensation:** Grantee shall pay Grantor FOUR HUNDRED TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$425,000.00) as additional compensation in full consideration for:
  - a. The irrevocable right to enter into possession of the Property and proceed with the construction and maintenance of the Facilities, the possession and use of the Property, and any other authorized activities outlined in Paragraph 5 of this Agreement; and
  - b. To limit the scope of the Proceeding to only the issue of full and just compensation owed to Grantor for Grantee's acquisition of fee simple title in and to the Property — *i.e.*, Grantor will stipulate that Grantee has the "right-to-take" fee simple title in and to the Property in the Proceeding consistent with the terms set forth in Paragraph 3 of this Agreement.

The parties agree that this sum:

- a. Is independent consideration for: (i) the possession and use of the Property and (ii) to limit the scope of the Proceeding to only the issue of full and just compensation owed to Grantor as a result of Grantee's acquisition of fee simple title in and to the Property — *i.e.*, Grantor will stipulate that Grantee has the "right-to-take" fee simple title in and to the Property in the Proceeding consistent with the terms set forth in Paragraph 3 of the Agreement;
- b. Does not represent an amount paid by Grantee toward full and just compensation for Grantee's acquisition of fee simple title in and to the Property; and
- c. Will not be refunded to Grantee or deducted from the compensation to be paid for Grantee's acquisition.

3. **Right-to-Take:** In the Proceeding, Grantor will stipulate that Grantee has the "right-to-take" fee simple title in and to the Property and will not contest, dispute, or interfere with that right in any way. Consistent therewith, Grantor will stipulate in the Proceeding that Grantee:
  - a. Has the right and power of eminent domain;
  - b. Is authorized to acquire fee simple title in and to the Property;
  - c. Has complied with all statutory prerequisites to suit.

Grantor will further stipulate in the Proceeding that:

- a. The Project and construction and maintenance of the Facilities is for a public purpose;
  - b. There exists a public necessity for acquiring the Property;
  - c. Grantee's proposed use of the Property constitutes a public use under Texas law;
  - d. Grantee's acquisition of fee simple title in and to the Property is necessary to achieve that public use and is necessary for the location, improvement, alignment, construction, operation, and maintenance of the Project and Facilities; and
  - e. The Project, which includes construction and maintenance of the Facilities, is desired public use for such purposes.
4. **Scope of the Proceeding:** Consistent with the terms set forth in Paragraph 3, the sole purpose of the Proceeding shall be to ensure that Grantor receives full and just compensation as allowed by Texas law as a result of Grantee's fee simple acquisition in and to the Property.
5. **Authorized Activities:** In addition to the irrevocable right to enter into possession of the Property and proceed with the construction and maintenance of the Facilities, and the possession and use of the Property, this Agreement also authorizes Grantee to:
  - a. Survey;
  - b. Inspect;
  - c. Conduct environmental and archeological studies;
  - d. Clear, demolish, and construct improvements and related facilities and appurtenances;
  - e. Demolish, relocate, replace, and improve existing improvements and facilities on the Property — including utility facilities; and
  - f. Locate new utility facilities.

This Agreement will extend to Grantee, its contractors, consultants, agents, assigns, utility providers, and those which may be lawfully permitted on the Property by Grantee in the future, and all others deemed necessary by Grantee.

This Agreement will allow for the construction, relocation, replacement, repair, improvement, operation, and maintenance of all utilities on the Property.

6. **Mediation:** Prior to Grantee initiating the Proceeding to acquire fee simple title in and to the Property through its power of eminent domain, the parties agree to participate in mediation in an attempt to resolve the Proceeding without the necessity of litigation. Grantor and Grantee will agree on a mediator and a mediation date and shall appear as directed by the mediator.
7. **Free and Clear Title:** Grantor warrants and represents that title to the Property is free and clear of all mortgages, deeds of trust, mechanics liens, and other monetary liens ("Monetary Liens") or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. Grantor further agrees to indemnify Grantee from all unreleased or undisclosed Monetary Liens.

Grantor further warrants and represents that: (i) it owns the fee simple title in and to the Property, subject to all matters of public record (other than Monetary Liens) and all matters which would be disclosed by an accurate and complete survey of the Property and (ii) no other person or entity owns an interest in the fee simple title in and to the Property.

Notwithstanding the foregoing or anything else contained herein to the contrary, Grantee acknowledges that the strip of land indicated on Exhibit A is owned by the State of Texas (the "State Property") and that Grantor makes no representations or warranties of any kind regarding the State Property. Grantee agrees to use good faith and commercially reasonable efforts to work with Grantor and the State of Texas to cause the State of Texas to donate the State Property to Grantor or to swap the State Property for other property owned by Grantor.

The above-made warranties are made by Grantor and accepted by Grantee.

8. **Date of Take:** The parties agree that the valuation date for determining the amount of just compensation for the Property for negotiation or condemnation purposes – *i.e.*, the day-of-take – will be the Effective Date of this Agreement.
9. **Special Commissioners Hearing:** If the Proceeding is not resolved by settlement necessitating a condemnation proceeding, the Parties agree that the Special Commissioners hearing for the Proceeding shall be held in person – not remotely – at the office of the Fort Bend County Attorney in Richmond, Texas.

Counsel for Grantor and Grantee shall agree in writing on a date on which to conduct the Special Commissioners' hearing for the Proceeding, and Grantor hereby agrees that service of notice of such hearing may be accomplished by hand delivery or certified mail, return receipt requested, with a copy via email, to:

Holland & Knight LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Attn: Morgan W. Jones  
*morgan.jones@hklaw.com*

10. **Oil and Gas:** Grantor reserves all of the oil, gas, and sulphur in and under the Property but waives all rights to use the surface of the Property for the purpose of exploring, developing, mining, or drilling for oil, gas, and other minerals or for ingress and egress relating to any such activities.

The extraction of oil, gas, and minerals may not affect the geological stability of the surface of the Property. However, nothing in this reservation will affect the title and rights of Grantor to take and use all other minerals thereon, and thereunder, by directional drilling or other means that do not interfere with or disturb the surface of the Property or Grantor's use of the Property.

11. **As Is, Where Is:** Except for the express warranties and representations set forth herein, Grantor has not made and does not make any express or implied warranties or representations of any kind regarding the Property and Grantee acknowledges and agrees that it is accepting the Property in "As Is, Where Is" condition with all faults.
12. **Binding Nature of Agreement:** This Agreement shall run with the land and extend to and bind Grantor, Grantee, and their respective successors and assigns, including the contractors, consultants, agents, and others Grantee deem necessary to construct and maintain the Facilities.
13. **Assignment:** No assignment shall relieve the assigning party of its obligations under this Agreement.
14. **Transfer or Encumbrance Involving the Property:** Any transfer or encumbrance involving the Property passes subject to the terms of this Agreement.
15. **Ad Valorem Taxes:** Until Grantee takes title to the Property, Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against the Property, including prorated taxes for the year in which Grantee takes title to the Property.
16. **Pre- and Post-Judgment Interest:** Grantee will not be liable to Grantor for interest upon any award or judgments as a result of the Proceeding.
17. **Recordation:** The parties agree that Grantee will record this document.
18. **Entire Agreement:** This Agreement, together with its Exhibits, constitute the entire agreement between Grantor and Grantee and supersedes all prior agreements, discussions, understandings, representations, and statements, oral or written, with respect to the Proceeding and this Agreement.



19. **No Reliance on Prior Representations:** In entering into this Agreement, the parties do not rely upon any prior oral, written, express, or implied representation, endorsement, agreement, or understanding of any kind.
20. **Voluntary Execution:** The parties expressly acknowledge and represent that they have voluntarily executed this Agreement and that they have been represented and advised by counsel concerning the terms and conditions of this Agreement. This Agreement shall not be construed and interpreted against any party on the basis that such party drafted a particular provision, or part thereof, or the entirety of this Agreement.
21. **Modification or Waiver:** This Agreement may not be altered, amended, changed, terminated, or modified in any respect except in writing. No waiver by any party hereto of any breach or default hereunder shall be deemed a waiver of any other or subsequent breach or default.
22. **Governing Law and Venue:** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without reference to its conflict of law principles, including without limitation to the applicable laws governing the determination of the compensation due for property interest acquired through the exercise of eminent domain. Jurisdiction and venue for any dispute related to this Agreement shall be in the state courts (county and/or district) of Fort Bend County, Texas.
23. **Authority to Execute:** Each party represents that the individual signing this Agreement on its behalf has the full authority to do so, that all necessary authorizations or approvals have been granted, and that no further approval or consent of any other person or entity is required to sign this Agreement.
24. **Severability:** In the event that any term, covenant, condition, or provision of this Agreement shall be held to be invalid or against public policy, the remaining provisions shall continue in full force and effect.
25. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.
26. **Payment and Approval:** This Agreement is contingent upon approval by the Fort Bend County Commissioners' Court and delivery and receipt of the consideration outlined in Paragraphs 1 and 2 of this Agreement.
27. **Termination of Agreement:** This Agreement is effective as of the Effective Date and shall terminate upon the earlier of:
  - a. Grantor's voluntary conveyance of the fee simple title in and to the Property to Grantee;
  - b. Mutual agreement of the parties; or
  - c. Upon final judgment in the Proceeding.



To have and to hold the Agreement as described herein and all rights and interest appurtenant thereto unto Grantees and their successors and assigns for the purposes set forth above.

[Remainder of Page Left Intentionally Blank; Signature and Acknowledgment Pages Follow]

In witness whereof, this Agreement is executed by the parties on the dates set forth below but effective as of the Effective Date.

**Westpark 99 Holdings, LLC**

By: \_\_\_\_\_  
Nicholas L. Paul  
Vice President of Westpark 99 Holdings, LLC

Date: \_\_\_\_\_

STATE OF TENNESSEE                      §  
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COUNTY OF DAVIDSON                   §

Before me, the undersigned Notary Public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared Nicholas L. Paul, Vice President of Westpark 99 Holdings, LLC, to me known to be the identical person who executed the within forgoing instrument and acknowledged to me that he executed the same in such capacity and as the free and voluntary act and deed of Westpark 99 Holdings, LLC for the uses and purposes set forth herein.

Witness my hand and official seal

\_\_\_\_\_  
Notary Public in and for the State of Tennessee  
My commission expires: \_\_\_\_\_

By: \_\_\_\_\_  
 KP George  
 Fort Bend County Judge

STATE OF TEXAS                                 §  
  §  
COUNTY OF FORT BEND                     §

Witness my hand and official seal

Notary Public in and for the State of Texas  
My commission expires: \_\_\_\_\_

## **Exhibit A**



## **Formal Survey and Description to Follow**