



Travis County Commissioners Court Agenda Request

Meeting Date: April 3, 2012

Prepared By: Greg Chico, Right-of-Way Manager **Phone #:** 854-4659

Division Director/Manager: Steve Manilla, P.E., County Executive

Carol B. Johnson
Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Gomez, Precinct Four

AGENDA LANGUAGE: Consider and take appropriate action on a proposed Miscellaneous Easement to be granted by the State of Texas to Travis County required by the U.S. Army Corps of Engineers and the State, as a condition for initiating construction activity on the Caldwell Lane, Section 14 Emergency Streambank Erosion Protection (2005 CIP Bond) Project in Precinct Four.

BACKGROUND/SUMMARY OF REQUEST:

In 2011, Travis County, TNR Public Works Staff (Engineering and ROW) began collaborative work with the U.S. Army Corps of Engineers to plan, design, and ultimately provides bank stabilization along an area of land located between Caldwell Lane and the Colorado River in Southeast Travis County. This project was approved by county voters as part of the November 2005 Bond Election. A small embankment land area has experienced considerable erosion over the past decade, and continued erosion of the riverbank threatens the integrity of several facilities involved in the provision of utility service to the general public. Specifically, Garfield Water Supply has water service equipment at risk of damage or destruction if the planned channel and infrastructure improvements are not completed. Moreover, the long-term viability of Caldwell Lane is jeopardized as well by the on-going erosion problem. A map showing the general area and approximate location of Caldwell Lane is attached as Exhibit "A." Additionally, a sketch of the project area is attached as Exhibit "B." To date, authorization and approval from all parties with a direct interest in the project (to include private property owners) have been obtained by TNR staff. However, to proceed with the anticipated construction work to be undertaken by the U.S. Army Corps of Engineers, an easement -- granting an interest from the State of Texas (General Land Office) to Travis County -- must be executed by the county (as recipient, or grantee). Additionally, the State of Texas, General Land Office (GLO) also requires payment of a \$350.00 application fee, in order to grant and process the mandatory "miscellaneous easement."

STAFF RECOMMENDATIONS:

TNR staff has worked closely with the County Attorney's Office over the past six months on meeting all the requirements for obtaining the rights to conduct the remediation and preventive erosion / stabilization work. The attached easement (Exhibit "C") has been reviewed and approved for use by the Travis County Attorney's Office. Given the nature of the threat to important public facilities, the fact that the county is the recipient of easement rights rather than the grantor, and the overall public investment in and use of the county-maintained Caldwell Lane, TNR recommends that the Commissioners Court: (1) approve the county's receipt of the proposed easement as Grantee; (2) direct execution of such easement by the County Judge as signatory; and, (3) authorize payment of the \$350.00 application fee stipulated by the General Land Office.

ISSUES AND OPPORTUNITIES:

This is an opportunity for the county to cooperate with various public and quasi-public entities to protect a public roadway, and important utility service for the local community, in a reasonable and appropriate manner.

FISCAL IMPACT AND SOURCE OF FUNDING:

If approved by the Commissioners Court, funding of \$350.00 for payment of the GLO application fee is available within the overall Caldwell Lane project budget (project # 3120 - F11500000 - 05B01A) , and is located within account # 512 4931 808 8166.

ATTACHMENTS/EXHIBITS:

- A: Map showing the subject's area and location of Caldwell Lane
- B: Sketch depicting general project
- C: Requested easement that the GLO is seeking to grant to Travis County

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429
Steve Sun	Acting Public Works Director	TNR	854-9383

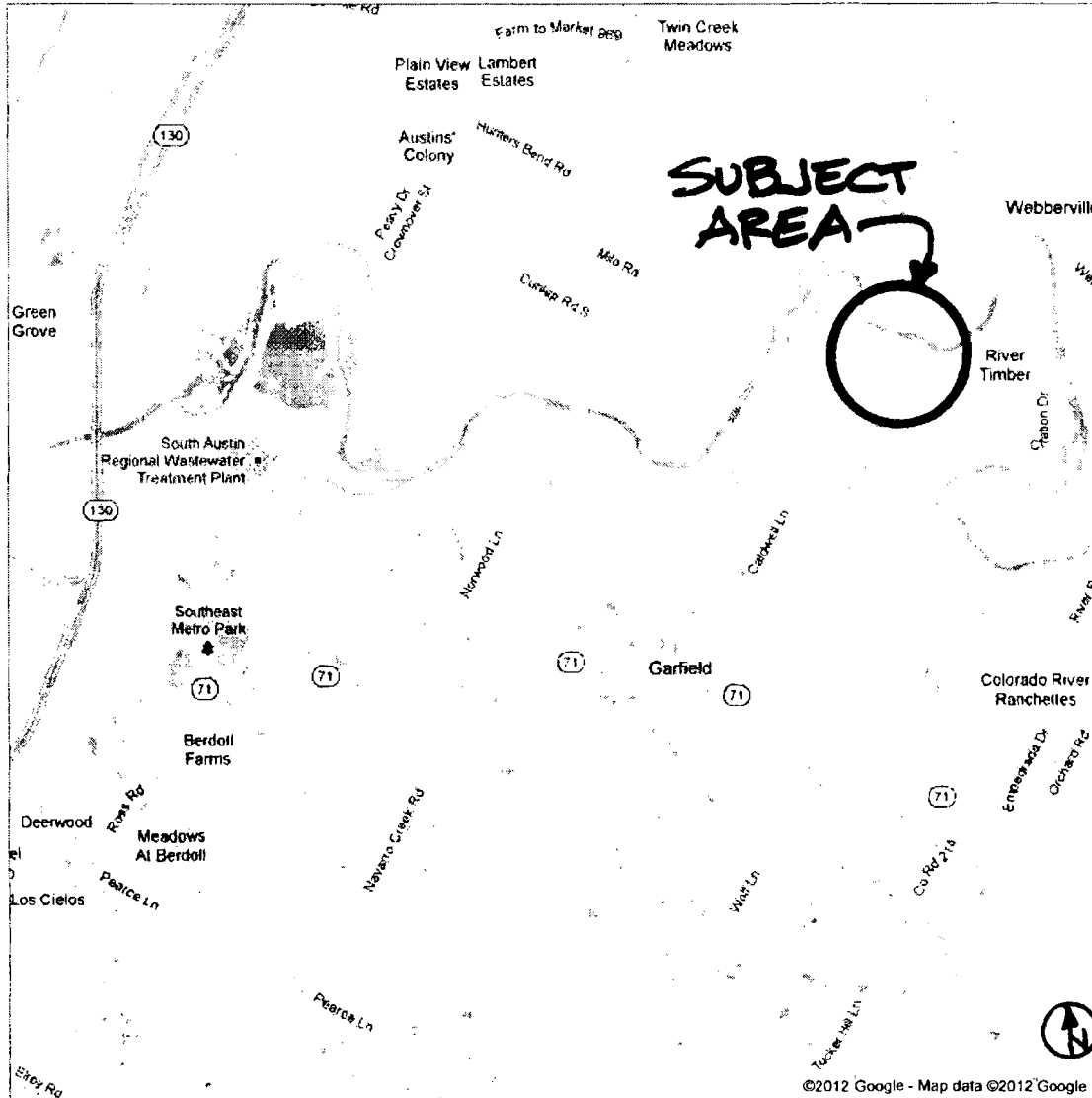
CC:

Chris Gilmore	Assistant County Atty.	TCAO	854-9455
Greg Chico	Right-of-Way Manager	TNR	854-4659
Dee Heap	Right-of-Way Negotiator	TNR	854-7647
Donna Williams-Jones	Senior Financial Analyst	TNR	854-7677

Google

EXHIBIT "A"

2005 Bond Project
Caldwell Lane (River Timber)
Emergency Streambank Erosion Protection



The State of Texas



Austin, Texas

EXHIBIT "C"

MISCELLANEOUS EASEMENT No. ME20120015

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

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This Miscellaneous Easement, ME20120015 (the "Agreement"), is granted by virtue of the authority granted in Section 51.291, et seq., TEX. NAT. RES. CODE, 31 TEX. ADMIN. CODE §13.12, et seq., and all other applicable statutes and rules, as the same may be amended from time to time, and is subject to all applicable regulations promulgated from time to time.

ARTICLE I. PARTIES

1.01. In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the STATE OF TEXAS, acting by and through the Commissioner of the General Land Office (the "GRANTOR"), hereby grants to Travis County, whose address is PO Box 1748, Austin, TX 78767-1748, phone number (512) 854-7647, (the "Grantee"), a non-exclusive easement for the purposes identified in Article V.

ARTICLE II. PREMISES

2.01. The easement is located across State-owned land in Travis County, Texas, described as follows:

Colorado River, and the easement is a right-of-way encumbering 0.691 acres formed by the Improvements (as hereinafter defined), as constructed (the "Premises").

The Premises are further described or depicted on the Vicinity Map attached hereto as Exhibit A, the Survey Plat attached hereto as Exhibit B and the metes and bounds description attached hereto as Exhibit C, collectively incorporated by reference for all purposes.

2.02. Grantee acknowledges and agrees that when the Improvements (as hereinafter defined) are placed on the Premises, the location of such Improvements within the easement shall thereby become fixed at such location and shall not be changed except by an amendment to this Agreement signed by both parties hereto and subject to any approval by any other governmental agency with jurisdiction over same.

2.03. GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS THE SAME "AS IS", IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. THE GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE GRANTOR AND GRANTEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS EASEMENT IS FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. NOTICE IS HEREBY GIVEN TO

GRANTEE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD AND GRANTEE IS ADVISED TO EXAMINE THE RECORDS IN THE ARCHIVES AND RECORDS DIVISION OF THE GENERAL LAND OFFICE, 1700 NORTH CONGRESS AVENUE, AUSTIN, TEXAS 78701-1495, AND ALL OTHER LAND TITLE RECORDS OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED.

ARTICLE III. TERM

3.01. This term of this Agreement shall begin on March 1, 2012, and shall be perpetual, for so long as Grantee shall continue to use the Premises as herein provided, unless amended, or sooner terminated as authorized by law or as set forth herein.

ARTICLE IV. CONSIDERATION AND TAXES

4.01. A. As consideration ("Consideration") for the granting of this easement, Grantee agrees to pay the GRANTOR (payable to the Commissioner of the General Land Office at Austin, Texas) the sum of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged.

B. Past due Consideration and other past due payments shall bear interest as provided in TEX. NAT. RES. CODE Section 51.301, as amended from time to time. Failure of Grantee to make a payment on or before the date the same becomes due shall, at the GRANTOR'S option, make all payments due and payable immediately.

4.02. In addition to the above, Grantee shall pay and discharge any and all taxes, general and special assessments, and other charges which during the term of this Agreement may be levied on or assessed against the Premises or the Improvements constructed thereon, provided such taxes result from Grantee's use of this easement. Grantee shall pay such taxes, charges, and assessments not less than five (5) days prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof. Grantee shall have the right in good faith at its sole cost and expense to contest any such taxes, charges, and assessments, and shall be obligated to pay the contested amount only if and when finally determined to be owed.

4.03. Grantee agrees to and shall protect and hold the GRANTOR harmless from liability for any and all such taxes, charges, and assessments, together with any penalties and interest thereon, and from any sale or other proceeding to enforce payment thereof.

ARTICLE V. USE OF THE PREMISES

5.01. Channel Improvement Easement: A perpetual and assignable right and easement to construct, operate, and maintain channel improvement works on, over and across (the land described in Exhibits B and C) for the purposes as authorized by the Act of Congress approved _____. Grantee and Grantee's employees, contractors, and agents, including, without limitation, the Department of the Army of the United States of America, shall have the right to use the Premises for a right-of-way to construct, maintain, inspect, and repair one (1) streambank protection project to stabilize the river (the "Improvements") including, to the extent but only to the extent that GRANTOR has the legal authority to grant such rights, (and GRANTOR does not represent that it has such authority), the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate: dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines. Grantee shall not use the Premises for any other

purpose without first obtaining written consent of the GRANTOR, which consent may be granted or withheld in the GRANTOR'S sole discretion.

5.02. A. The GRANTOR and Grantee hereby acknowledge and agree that each shall have reciprocal rights of ingress and egress to and from the Premises across contiguous or adjacent State-owned land or land owned by Grantee, provided in the exercise of this right the GRANTOR and Grantee agree not to unreasonably interfere with the other party's (or that party's agents, assignees, or designees) use of its property. Grantee shall have the right of ingress and egress for the purposes of constructing, maintaining, operating, inspecting, and repairing the Improvements and such right is not granted for any other purpose. Grantee and the GRANTOR mutually agree to use contiguous or adjacent State-owned land or land owned by Grantee, respectively, only to the extent and for the length of time necessary to provide access to and from the Premises. Notwithstanding any other provisions to the contrary, no easement is created by this Section 5.02; instead, a license is granted to the parties and their respective officers, employees, agents and contractors for the limited purposes set forth herein.

B. Grantee acknowledges and agrees that the GRANTOR'S right of ingress and egress described in Section 5.02.A. of this Agreement shall be and remain in effect as long as the Improvements and any other structure placed on the Premises by Grantee remain on the Premises and/or as necessary for the GRANTOR to confirm the removal (in whole or in part) of the Improvements. Such right of ingress and egress shall survive the expiration or earlier termination of this Agreement.

5.03. Grantee shall be fully liable and responsible for any damage, of any nature, arising or resulting from any act or omission of Grantee or Grantee's officers, employees, agents, contractors and invitees, which are related to the exercise of the rights granted in this Article V.

5.04. A. Grantee's use of the Premises is subject to and contingent upon compliance with the following covenants, obligations and conditions (the "Special Conditions"):

1. Grantee is responsible for maintaining all structures authorized under this contract in good repair and safe condition, and in compliance with all existing state and federal regulations governing such work.
2. Grantee is required to perform mitigation and/or pay surface damage fees according to the Grantor's policy in effect at the time damages occur for any and all surface damages resulting from actions of Grantee's employees, contractors, and/or agents during the term of this easement. If mitigation is required Grantee will be notified in writing by the Grantor of the terms and conditions under which the mitigation shall be conducted. Such mitigation and/or payment of damage fees shall be performed in the manner and within the time frame specified in written notice provided by the Grantor to Grantee following said damages.
3. Grantee shall not commit waste and shall keep all improvements and land in reasonably neat condition.
4. Grantee shall not store hazardous or petroleum products on the Premises.
5. Grantee shall leave the Premises clean and free of debris and construction materials upon completion of the streambank protection project.

B. Prior to any construction, installation or other activities on the Premises, Grantee shall provide written notice of all Special Conditions, if any, to any contractor and/or agent involved in such activities. Grantee shall send a copy of such notice to the General Land Office, ATTN: Asset Inspection, 1700 N. Congress Avenue, Austin, Texas 78701-1495.

5.05. The GRANTOR, its agents, representatives and employees shall have the right to enter upon the Premises at any reasonable time (or any time in case of emergency) for purposes of inspection, repair (and Grantee agrees to repay the Grantor the reasonable cost thereof on written demand) and any other purpose necessary to protect the GRANTOR'S interests therein. Further, the GRANTOR shall have the right to use or to permit the use of any or all of the Premises for any purpose deemed, in the GRANTOR'S sole discretion, to be consistent with Grantee's easement grant.

5.06. Grantee shall not use, or permit the use of the Premises for any illegal purpose. Grantee shall comply, and will cause its officers, employees, agents, contractors and invitees to comply, with all applicable laws, ordinances, rules, and regulations of governing agencies concerning use of the Premises.

5.07. Failure by Grantee to construct, maintain and operate the Improvements in accordance with this Article V shall render such Improvements "unauthorized structures" under TEX. NAT. RES. CODE §51.302.

ARTICLE VI. ASSIGNMENTS

6.01. GRANTEE SHALL NOT ASSIGN THE PREMISES OR THE RIGHTS GRANTED HEREIN, IN WHOLE OR PART, TO ANY THIRD PARTY FOR ANY PURPOSE WITHOUT THE PRIOR WRITTEN CONSENT OF THE GRANTOR, WHICH MAY BE GRANTED OR DENIED IN THE GRANTOR'S SOLE DISCRETION. ANY UNAUTHORIZED ASSIGNMENT SHALL BE VOID AND OF NO EFFECT, AND SUCH ASSIGNMENT SHALL NOT RELIEVE GRANTEE OF ANY LIABILITY FOR ANY OBLIGATION, COVENANT, OR CONDITION OF THIS AGREEMENT. THIS PROVISION, AND THE PROHIBITION AGAINST ASSIGNMENT CONTAINED HEREIN, SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT. FOR PURPOSES OF THIS AGREEMENT, AN ASSIGNMENT IS ANY TRANSFER, INCLUDING BY OPERATION OF LAW, TO ANOTHER OF ALL OR PART OF THE PROPERTY, INTEREST OR RIGHTS HEREIN GRANTED.

ARTICLE VII. PROTECTION OF NATURAL and HISTORICAL RESOURCES

7.01. Grantee shall use the highest degree of care and all appropriate safeguards to: (i) prevent pollution of air, ground, and water in and around the Premises, and (ii) to protect and preserve natural resources and wildlife habitat. Grantee shall comply with all applicable rules and regulations of the General Land Office, the School Land Board, and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution or an incident that may result in pollution of the Premises or adjacent property which is the result of Grantee's (or Grantee's employees, contractors, and agents) acts or omissions, Grantee shall immediately notify the GRANTOR, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.

7.02. GRANTEE IS HEREBY EXPRESSLY NOTIFIED OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915, 16 U.S.C.A. SECTION 470, ET.SEQ.) AND THE TEXAS ANTIQUITIES CODE [TITLE 9, CHAPTER 191, TEX. NAT. RES. CODE]. IN CONFORMANCE WITH THESE LAWS, IN THE EVENT THAT ANY SITE, FOUNDATION, BUILDING, STRUCTURE, LOCATION, OBJECT, ARTIFACT, ITEM OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS AGREEMENT, GRANTEE SHALL IMMEDIATELY CEASE ANY AND ALL ACTIVITIES, AND NOTIFY THE COMMISSIONER OF THE GENERAL LAND OFFICE AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT APPROPRIATE ACTION MAY BE TAKEN. In the event that Grantee is required to cease activities, the GRANTOR shall not be liable for any costs of Grantee, Grantee's agents, employees, contractors, subcontractors, or any other person or entity as a result of any interruption of Grantee's activities or inability to use the Premises as herein contemplated.

ARTICLE VIII. INDEMNITY and INSURANCE

8.01. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL BE FULLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE, OF ANY NATURE, ARISING OR RESULTING FROM ITS OWN ACTS OR OMISSIONS RELATED TO ITS EXERCISE OF THE RIGHTS GRANTED HEREIN. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE GRANTOR, THE GRANTOR'S OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST CLAIMS, SUIT, COSTS, LIABILITY OR DAMAGES OF ANY KIND, INCLUDING STRICT LIABILITY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO CAUSE OF THE DAMAGES OR THE NEGLIGENCE OF ANY PARTY, EXCEPT FOR THE CONSEQUENCES OF THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF THE GRANTOR, THE GRANTOR'S OFFICERS, AGENTS, EMPLOYEES, OR INVITEES, ARISING DIRECTLY OR INDIRECTLY FROM GRANTEE'S USE OF THE PREMISES (OR ANY ADJACENT OR CONTIGUOUS STATE-OWNED LAND) OR FROM ANY BREACH BY GRANTEE OF THE TERMS, COVENANTS OR CONDITIONS CONTAINED HEREIN.

8.02. A. Grantee agrees to either (i) purchase and maintain a Required Policy (as hereinafter defined) of insurance coverage, or (ii) provide Financial Documentation (as hereinafter defined) to the GRANTOR. Grantee agrees to deliver or cause to be delivered to the GRANTOR and/or the GRANTOR'S designee either, as applicable: (i) a certificate of insurance for any Required Policy or (ii) Financial Documentation, within ten (10) days of execution of this Agreement. At all times during the term of this Agreement, Grantee shall cause the required evidence of insurance coverage or financial capacity to be deposited with the GRANTOR. If Grantee fails to do so, such failure may be treated by the GRANTOR as a default by Grantee under this Agreement.

B. The phrase "Required Policy" shall mean the policy of insurance required to be maintained by Grantee under the rules promulgated by the General Land Office and/or the School Land Board. Such Required Policy shall insure against any and all loss or damage as may be required by rule (including, without limitation, coverage for bodily injury, death, property damage, premises and operations, products liability, contractual liability, and/or strict liability). Any Required Policy shall name the GRANTOR (and any of its successors and assigns designated by the GRANTOR) as an additional insured.

C. The phrase "Financial Documentation" shall mean a financial statement and/or other evidence of financial responsibility or capacity which is determined to be satisfactory to the GRANTOR.

ARTICLE IX. DEFAULT, TERMINATION and EXPIRATION

9.01. If, following 30 days prior written notice from the GRANTOR specifying a default or breach, Grantee fails to pay any money due hereunder or is in breach of any term or condition of this Agreement, the GRANTOR shall have the right, at its option and its sole discretion, to terminate this Agreement and all rights inuring to Grantee herein by sending written notice of such termination to Grantee in accordance with Article XI of this Agreement. Upon sending of such written notice, this Agreement shall automatically terminate and all rights granted herein to Grantee shall revert to the GRANTOR. Such termination shall not prejudice the rights of the GRANTOR to collect any money due or to seek recovery on any claim arising hereunder.

9.02. A. Except as otherwise provided in subsection B, Grantee shall, within one hundred twenty (120) days from the date of expiration or sooner termination of this Agreement, remove all personal property, structures, and the Improvements, and shall restore the Premises (and any other property affected by such removal activities) to the same condition that existed before Grantee entered thereon. Such removal and restoration activities shall be conducted in accordance with General Land Office guidelines in effect at the time of removal/restoration which may include, without limitation, specific removal techniques required for protection of natural resources, and mitigation or payment in lieu of mitigation for any and all damages resulting from removal activities. Grantee shall notify the GRANTOR at least ten (10) days before commencing removal/restoration activities so that a field inspector may be present.

B. Pursuant to 31 TEX. ADMIN. CODE §13.13(c)(1), the GRANTOR may waive the removal/restoration requirements in this Section 9.02 if, in the GRANTOR'S sole opinion and discretion, such waiver is in the best interest of the Grantor. Any such waiver shall be in writing and may be conditioned upon factors including, without limitation, the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing Improvement(s), and other factors considered to be in the best interest of the GRANTOR.

ARTICLE X. HOLDOVER

10.01. If Grantee holds over and continues in possession of the Premises after expiration or earlier termination of this Agreement, Grantee will be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Agreement, except that as liquidated damages by reason of such holding over, the amounts payable by Grantee under this Agreement shall be increased such that the Consideration payable under Section 4.01 of this Agreement and any other sums payable hereunder shall be two hundred percent (200%) of the amount payable to the GRANTOR by Grantee for the applicable period immediately preceding the first day of the holdover period. Grantee acknowledges that in the event it holds over, the GRANTOR'S actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. Grantee further acknowledges that acceptance of hold over Consideration does not imply GRANTOR consent to hold over.

10.02. The tenancy from month-to-month described in Section 10.01 of this Agreement may be terminated by either party upon thirty (30) days written notice to the other.

10.03. The Consideration due after notice of termination has been given is to be calculated according to Section 10.01 hereinabove on a pro rata basis. If upon notice of termination by the GRANTOR, Grantee pays Consideration in excess of the amount due and payable and the GRANTOR accepts such payment, the acceptance of such payment will not operate as a waiver by the GRANTOR of the notice of termination unless such waiver is in writing and signed by the GRANTOR. Any such excess amounts paid by Grantee and accepted by the GRANTOR shall be promptly refunded by the GRANTOR after deducting therefrom any amounts owed to the GRANTOR.

ARTICLE XI. NOTICE

11.01. Any notice which may or shall be given under the terms of this Agreement shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, if for the GRANTOR to Deputy Commissioner, Professional Services, addressed to his attention, 1700 North Congress Avenue, Austin, Texas 78701-1495, FAX: (512) 463-5098, and if for Grantee, to it at PO Box 1748, Austin, TX 78767-1748, and FAX: (512) 854-4648. Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Premises may not be used by Grantee as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided.

11.02. For purposes of the calculation of various time periods referred to in this Agreement, notice delivered by hand shall be deemed received when delivered to the place for giving notice to a party referred to above. Notice mailed in the manner provided above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after posting as herein provided.

ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. A. Grantee shall submit to the GRANTOR, within one hundred eighty (180) days following installation or construction of the Improvements authorized in this Agreement, an "as-built" survey and field notes prepared by a surveyor duly licensed by the State of Texas. The as-built survey shall be conducted in accordance with the GRANTOR'S survey requirements attached hereto as Exhibit D. Failure or refusal by Grantee to timely provide the as-built survey when due hereunder and the continuance of such failure for thirty (30) consecutive days after the receipt of the GRANTOR'S written notice to Grantee specifying such failure may be treated as a default by Grantee hereunder and the GRANTOR may, in addition to any other remedy and in the GRANTOR'S sole discretion, terminate this Agreement and require removal of any personal property and the Improvements located on the Premises in accordance with Section 9.02 of this Agreement.

B. Upon receipt of the as-built survey, prepared in accordance with this Section 12.01, the GRANTOR shall compare the as-built survey with the proposed location of the Improvements, as represented by Grantee's application to the GRANTOR and set forth in Section 2.01 hereof. If there are any changes or discrepancies in the location of the Improvements authorized by this Agreement, the GRANTOR may, in its sole discretion, either (i) terminate this Agreement and require removal and/or relocation of the Improvements upon written notice to Grantee, or (ii) replace Exhibit "B" attached hereto with a substitute corrected exhibit denoted "Exhibit B-1". The substitute shall be the as-built survey, signed by both parties, and, upon attachment hereto, Exhibit "B" shall be void and of no further effect.

12.02. If all or any part of the Improvements are buried, Grantee shall submit to the GRANTOR, one hundred eighty (180) days following installation or construction of the Improvements, a "burial survey" prepared by a surveyor duly licensed by the State of Texas. The burial survey shall be conducted in accordance with the GRANTOR'S survey requirements attached hereto as Exhibit D. Failure or refusal by Grantee to timely provide the burial survey when due hereunder and the continuance of such failure for thirty (30) consecutive days after the receipt of the GRANTOR'S written notice to Grantee specifying such failure may be treated as a default by Grantee hereunder and the GRANTOR may, in addition to any other remedy and in the GRANTOR'S sole discretion, terminate this Agreement and require removal of any personal property and the Improvements located on the Premises in accordance with Section 9.02 of this Agreement.

12.03. Grantee shall provide written notice to the GRANTOR of any change in Grantee's name, address, corporate structure, legal status or any other information relevant to this Agreement.

12.04. Grantee shall provide to the GRANTOR any other information reasonably requested by the GRANTOR in writing within fifteen (15) days following such request or such other time period approved by the GRANTOR (such approval not to be unreasonably withheld).

12.05. Except with regard to initial construction/installation of the Improvements and emergencies, prior to conducting any activities at the Premises which may materially impact natural resources in or around the Premises, Grantee shall provide written notice to the GRANTOR describing the proposed activities in detail and any procedures which will be used to protect natural resources. Such notice shall be provided by Grantee to the GRANTOR at least sixty (60) days prior to conducting re-burial activities, and at least thirty (30) days prior to conducting major repairs, modification, or other activities. Grantee acknowledges and agrees that the GRANTOR shall have at least twenty (20) days following receipt of the notice to review the proposed activities and to impose specific conditions for conducting such activities which, in the GRANTOR'S sole determination, are necessary to protect natural resources or to mitigate for actual damages to natural resources. If the GRANTOR has not provided notice to Grantee within twenty (20) days following receipt of Grantee's notice, the GRANTOR is deemed to have approved, subject to the terms of this Agreement, the proposed activities to be conducted at the Premises. In case of emergencies, Grantee may undertake all actions necessary to prevent imminent injury or damage to public health, safety or welfare, and/or to protect natural resources. Within twenty-four (24) hours following such emergency

actions, Grantee shall provide notice to the GRANTOR of such actions as hereinabove provided. (If not during normal business hours, call 1-800-832-8224).

12.06. Grantee hereby acknowledges that late submission by Grantee to the GRANTOR of information (including, without limitation, as-built and/or burial surveys) required under this Agreement will cause the GRANTOR to incur various expenses not contemplated by this Agreement, the exact amount of which are presently difficult to ascertain. Accordingly, if any information required to be submitted within a certain time under the terms of this Agreement shall not be received by the GRANTOR on or before five (5) days after the date when due, then, Grantee shall pay to the GRANTOR a "Late Charge" equal to one hundred dollars (\$100.00) for each day so past due. The GRANTOR and Grantee agree that such Late Charge represents a fair and reasonable estimate of the expenses that the GRANTOR will incur by reason of such late submission of information by Grantee. Acceptance of such Late Charge by the GRANTOR shall not constitute a waiver of Grantee's default with respect to any such past due information, nor prevent the GRANTOR from exercising any other rights and remedies granted under this Agreement, at law, or in equity.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.01. With respect to terminology in this Agreement, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Agreement, but such other provisions shall continue in full force and effect.

13.02. The titles of the Articles in this Agreement shall have no effect and shall neither limit nor amplify the provisions of the Agreement itself. This Agreement shall be binding upon and shall accrue to the benefit of the GRANTOR, its successors and assigns, Grantee, Grantee's successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by the GRANTOR to any assignment by Grantee, but instead refers only to those instances in which an assignment is hereafter made in strict compliance with Article VI above, or in the case of a deceased natural person grantee, refers to the instances previously referred to in this sentence and also circumstances in which title to Grantee's interest under this Agreement passes, after the demise of Grantee, pursuant to Grantee's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire agreement, not just to the specific article, section or paragraph in which such words appear.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by Grantee hereunder (or any portion thereof) to the GRANTOR nor failure by the GRANTOR to complain of any action, non-action or default of Grantee shall constitute a waiver as to any breach of any covenant or condition of Grantee contained herein nor a waiver of any of the GRANTOR'S rights hereunder. Waiver by the GRANTOR of any right for any default of Grantee shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of the GRANTOR hereunder or covenant, duty or obligation of Grantee hereunder shall be deemed waived by the GRANTOR unless such waiver be in writing, signed by a duly authorized representative of the GRANTOR.

13.04. No provision of this Agreement shall be construed in such a way as to constitute the GRANTOR and Grantee joint venturers or co-partners or to make Grantee the agent of the GRANTOR or make the GRANTOR liable for the debts of Grantee.

13.05. In all instances where Grantee is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06. Under no circumstances whatsoever shall the GRANTOR ever be liable hereunder for consequential damages or special damages. The terms of this Agreement shall only be binding on the GRANTOR during the period of its ownership of the Premises, and in the event of the transfer of such ownership interest, the GRANTOR shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Agreement term upon each new owner for the duration of such owner's ownership.

13.07. All monetary obligations of the GRANTOR and Grantee (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas.

13.08. The obligation of Grantee to pay all Consideration and other sums hereunder provided to be paid by Grantee and the obligation of Grantee to perform Grantee's other covenants and duties under this Agreement constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Agreement and not otherwise. Grantee waives and relinquishes all rights which Grantee might have to claim any nature of lien against, or withhold or deduct from or offset against, any Consideration or other sums provided hereunder to be paid to the GRANTOR by Grantee. Grantee waives and relinquishes any right to assert, either as a claim or as a defense, that the GRANTOR is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the GRANTOR not expressly set forth in this Agreement.

ARTICLE XIV. FILING

14.01. Grantee shall, at its sole cost and expense, record this Agreement in the Travis County Real Property Records and provide a file marked copy to the GRANTOR within 60 days after this Agreement is executed by all parties.

ARTICLE XV. ENTIRE AGREEMENT

15.01. This Agreement ME20120015, including exhibits, constitutes the entire agreement between the GRANTOR and Grantee and no prior written or prior or contemporaneous oral promises, warranties or representations shall be binding. This Agreement shall not be amended, changed, altered, assigned or extended except by written instrument signed by all parties hereto.

15.02. This Agreement shall become effective only upon execution by all parties hereto and delivery of a fully executed counterpart to each party.

LEGEND

- PLANTER
- WALL
- BUILDING
- EDGE OF ASPHALT
- RPRCT REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS
- OPRCT OFFICIAL PUBLIC RECORDS
TRAVIS COUNTY, TEXAS

COLORADO RIVER

RIPRAP TOE PROTECTION LIMITS

1 STORY FRAME
HOUSE ON PIERS

TCE 1

WOOD DECK

ONE STORY
RESIDENCE

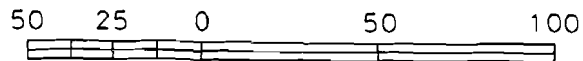
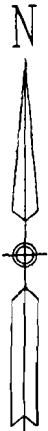
CALDWELL LANE

JOSE ANTONIO NAVARRO GRANT
ABSTRACT 18

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DATE: 13-Apr-11 13:30



TRAVIS COUNTY, TEXAS
TRANSPORTATION and NATURAL
RESOURCES DEPARTMENT



SCALE IN FEET

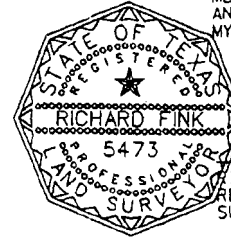
NOTES:

BEARING BASIS AND COORDINATES SHOWN ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, CENTRAL ZONE.

THIS IS AN EASEMENT. NO MONUMENTS WERE SET FOR THIS TRACT.

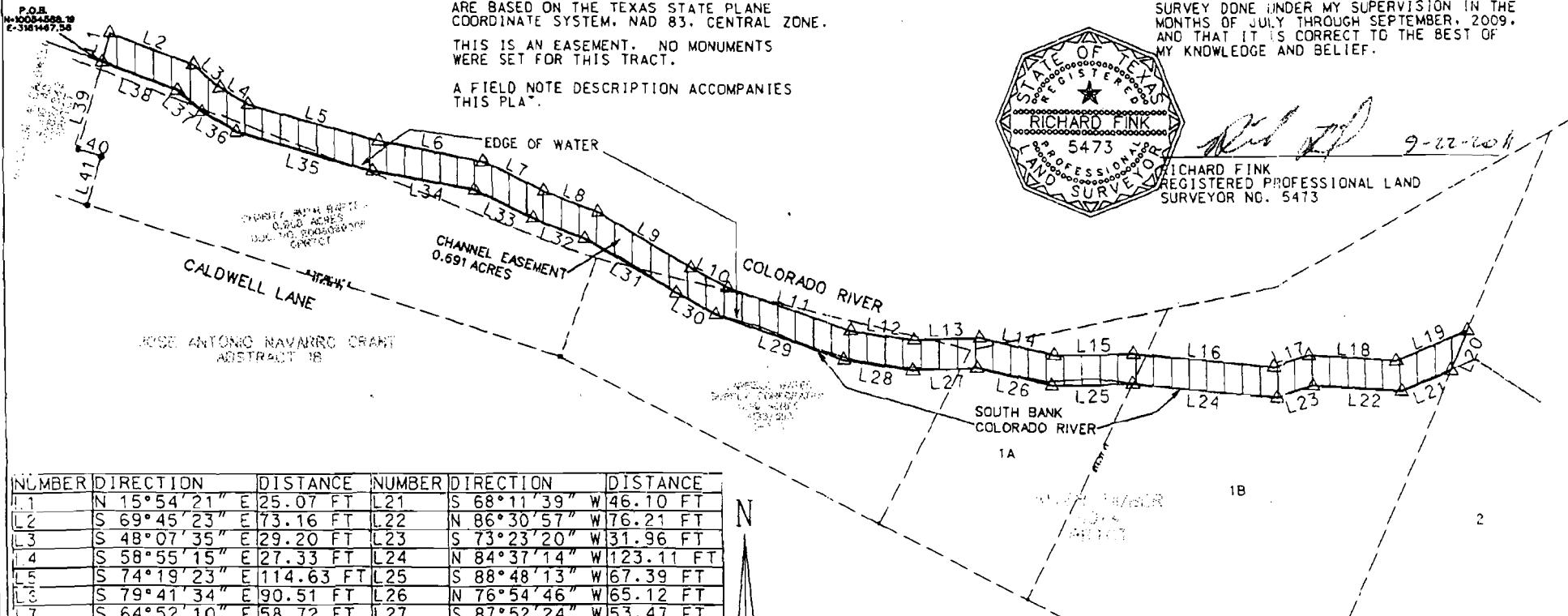
A FIELD NOTE DESCRIPTION ACCOMPANIES THIS PLAN.

I, THE UNDERSIGNED DO HEREBY CERTIFY THAT THIS PLAT REPRESENTS AN ON THE GROUND SURVEY DONE UNDER MY SUPERVISION IN THE MONTHS OF JULY THROUGH SEPTEMBER, 2009, AND THAT IT IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



Richard Fink
9-22-2011

RICHARD FINK
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5473

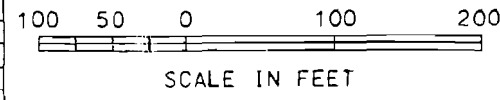


NUMBER	DIRECTION	DISTANCE	NUMBER	DIRECTION	DISTANCE
L1	N 15°54'21" E	25.07 FT	L21	S 68°11'39" W	46.10 FT
L2	S 69°45'23" E	73.16 FT	L22	N 86°30'57" W	76.21 FT
L3	S 48°07'35" E	29.20 FT	L23	S 73°23'20" W	31.96 FT
L4	S 58°55'15" E	27.33 FT	L24	N 84°37'14" W	123.11 FT
L5	S 74°19'23" E	114.63 FT	L25	S 88°48'13" W	67.39 FT
L6	S 79°41'34" E	90.51 FT	L26	N 76°54'46" W	65.12 FT
L7	S 64°52'10" E	58.72 FT	L27	S 87°52'24" W	53.47 FT
L8	S 68°30'35" E	48.72 FT	L28	N 80°38'13" W	58.22 FT
L9	S 58°08'32" E	91.03 FT	L29	N 70°44'02" W	113.85 FT
L10	S 60°42'10" E	34.71 FT	L30	N 60°42'10" W	37.46 FT
L11	S 70°44'02" E	109.49 FT	L31	N 58°08'32" W	89.32 FT
L12	S 80°38'13" E	53.54 FT	L32	N 68°30'35" W	47.25 FT
L13	N 87°52'24" E	54.29 FT	L33	N 64°52'10" W	56.26 FT
L14	S 76°54'46" E	65.33 FT	L34	N 79°41'34" W	88.43 FT
L15	N 88°48'13" E	65.69 FT	L35	N 74°19'23" W	119.19 FT
L16	S 84°37'14" E	119.69 FT	L36	N 58°55'15" W	33.08 FT
L17	N 73°23'20" E	31.53 FT	L37	N 48°07'35" W	26.79 FT
L18	S 86°30'57" E	75.03 FT	L38	N 69°45'23" W	66.49 FT
L19	N 68°11'39" E	65.88 FT	L39	S 15°54'21" W	76.52 FT
L20	S 23°38'29" W	35.63 FT	L40	S 73°38'35" E	19.97 FT
			L41	S 15°54'21" W	41.27 FT



LEGEND

- △ CALCULATED POINT
- IRON ROD FOUND
- RPRCT REAL PROPERTY RECORDS TRAVIS COUNTY, TEXAS
- OPRCT OFFICIAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
- PRCT PLAT RECORDS TRAVIS COUNTY, TEXAS



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DATE: 22-Sep-11 12:31



TRAVIS COUNTY, TEXAS
TRANSPORTATION and NATURAL RESOURCES DEPARTMENT

SKETCH TO ACCOMPANY FIELD NOTES OF A CHANNEL EASEMENT IN THE COLORADO RIVER, IN THE JOSE ANTONIO NAVARRO GRANT, ABSTRACT 18, TRAVIS COUNTY, TEXAS

Exhibit B
ME20120015

**LEGAL DESCRIPTION
OF A CHANNEL EASEMENT
OUT OF THE JOSE ANTONIO
NAVARRO GRANT, ABSTRACT 18,
TRAVIS COUNTY, TEXAS**

Being a 25 foot wide channel easement, situated in the Jose Antonio Navarro Grant, Abstract 27, being within the banks of the Colorado River, and being more particularly described as follows:

BEGINNING at a calculated point (Texas State Plane Coordinates N 10054568.19, E 3181467.58) on the south bank of the said Colorado River, for the southwest corner hereof. From which point the southwest corner of that certain tract of land called 0.998 acres, as described in a deed to Charity Ruth Bartell, recorded in Document No. 2008069305, of the Official Public Records of Travis County, Texas, bears the following calls:

S 15° 54' 21" W, at 6.52 feet, pass a point for the called northwest corner of the said Bartell tract, for a total distance of 76.52 feet to a 1/2" iron rod found for a westerly corner of the said Bartell tract;

S 73° 38' 35" E, 19.97 feet to a 1/2" iron rod found for an interior corner of the said Bartell tract;

S 15° 54' 21" W, 41.27 feet to a 1/2" iron rod found on the north right-of-way of Caldwell Lane, for the southwest corner of the said Bartell tract.

THENCE, leaving the bank of said Colorado River, entering the riverbed, N 15° 54' 21" E, 25.07 feet to a calculated point for the northwest corner hereof;

THENCE, down the said riverbed the following eighteen (18) calls, all to calculated points:

S 69° 45' 23" E, 73.16 feet;

S 48° 07' 35" E, 29.20 feet;

S 58° 55' 15" E, 27.33 feet;

S 74° 19' 23" E, 114.63 feet;

S 79° 41' 34" E, 90.51 feet;

S 64° 52' 10" E, 58.72 feet;

S 68° 30' 35" E, 48.72 feet;

S 58° 08' 32" E, 91.03 feet;

S 60° 42' 10" E, 34.71 feet;

S 70° 44' 02" E, at 21.51 feet, cross the called north line of that certain tract of land called 0.89 acres, as described in a deed to Garfield Water Supply Corporation, recorded in Volume 3188, Page 693 of the Deed Records of Travis County, Texas, for a total distance of 109.49 feet;

S 80° 38' 13" E, 53.54 feet;

N 87° 52' 24" E, at 13.35 feet, again cross the called north line of the said Garfield tract, for a total distance of 54.29 feet;

S 76° 54' 46" E, at 19.39 feet, cross the platted north line of Lot 1A, Fiver Timber, a subdivision of record in Volume 60, Page 4 of the Plat Records of Travis County, Texas for a total distance of 65.33 feet;

N 88° 48' 13" E, 65.69 feet;

S 84° 37' 14" E, at 10.94 feet, cross the platted east line of the said Lot 1A and the west line of Lot 1B, for a total distance of 119.69 feet;
N 73° 23' 20" E, 31.53 feet;
S 86° 30' 57" E, 75.03 feet;
N 68° 11' 39" E, 65.88 feet to a calculated point on the platted east line of the said Lot 1B and the west line of Lot 2, for the northeast corner hereof;

THENCE, with the platted east line of the said Lot 1B and the west line of Lot 2, S 23° 38' 29" W, 35.63 feet to a calculated point on the south bank of the said Colorado River, for the southeast corner hereof;

THENCE, up the south bank of the said Colorado River, with its meanders, the following eighteen (18) calls, all to calculated points:

S 68° 11' 39" W, 46.10 feet;
N 86° 30' 57" W, 76.21 feet;
S 73° 23' 20" W, 31.96 feet;
N 84° 37' 14" W, 123.11 feet to a calculated point on the platted west line of the said Lot 1B and east line of Lot 1A;
S 88° 48' 13" W, 67.39 feet;
N 76° 54' 46" W, 65.12 feet;
S 87° 52' 24" W, at 13.73 feet, cross the platted west line of Lot 1A and the called east line of the said Garfield tract, for a total distance of 53.47 feet;
N 80° 38' 13" W, 58.22 feet;
N 70° 44' 02" W, 113.85 feet;
N 60° 42' 10" W, 37.46 feet;
N 58° 08' 32" W, at 41.94 feet, cross the called north line of the said Garfield tract, for a total distance of 89.32 feet;
N 68° 30' 35" W, 47.25 feet;
N 64° 52' 10" W, 56.26 feet;
N 79° 41' 34" W, 88.43 feet;
N 74° 19' 23" W, at 20.67 feet, cross the called north line of the said Bartell tract, for a total distance of 119.19 feet;
N 58° 55' 15" W, 33.08 feet;
N 48° 07' 35" W, at 7.35 feet, again cross the called north line of the said Bartell tract, for a total distance of 26.79 feet;
N 69° 45' 23" W, 66.49 feet to the POINT OF BEGINNING and containing 0.691 of

an acre of land, more or less.

Bearing basis and coordinates are based on the Texas State Plane Coordinate System, NAD 83, Central Zone.

This is an easement, no monuments have been set.

This description is accompanied by a sketch of even date.

I hereby certify that this description and accompanying sketch represents an on the ground survey made under my supervision, in the months of July through September, 2009, and is true and correct to the best of my knowledge and belief.


Richard Fink
9-22-2011
R.P.L.S. No. 5473



Existing Installations: At time of renewal of an easement for an existing underground power transmission line or communication line, provide the data as required under Section 3.02.(iv) of this easement contract.

CERTIFICATION BY A TEXAS REGISTERED PUBLIC LAND SURVEYOR IS REQUIRED ON ALL OF THE FOLLOWING WITH THE EXCEPTION OF DIRECTIONALLY DRILLED WELL BORE LOGS IN ITEM B1C.

B. SPECIFIC INSTRUCTIONS:

Maps or Survey Plats to be submitted as the Project Site Map and/or the Detailed Project Plan (see A7 and 8 above) must contain the information described below.

Upland survey data should be reported to normal boundary land surveying minimum standards. Offshore or submerged sites shall be located to a specified accuracy of +/- 5 feet of any reported location.

1. Projects located on Tidally Influenced State-owned lands (Including the Gulf of Mexico, bay tracts, and the tidally influenced portions of rivers, creeks, streams, and bayous):

a. Rights-of-Way (e.g., Miscellaneous Easements for transmission lines, roads, etc.)

Coordinates must be provided at the beginning and ending points of the ROW's centerline, or on the principal point or points of tracts described by other means (directional well bores, etc.). These coordinates must be based on the Texas State Plane Coordinate System of 1927 or 1983. Courses and distances must be specified as either grid or geodetic for all centerlines and perimeter lines, and ties must be made from specific improvements (e.g., well heads, platforms, pilings, etc.) to a corner or corners of the lease or easement tract. All submerged state land tracts crossed by any part of the ROW must be shown and identified, and the points of each ROW crossing of a state-tract boundary identified in the Texas State Plane Coordinate System of 1927 or 1983. The distance between crossings of a state-tract boundary must be indicated in both feet and rods on the plat.

As-built plats (and confirmation surveys at time of renewal) must give bearing and distance between angle points along the easement route. In the event no angle points exist along the course of the ROW, the plat shall provide a minimum of one identified point for each 1,000 feet of ROW length. A ROW less than 1,000 feet long but greater than 500 feet in length requires one mid-point to be identified on the survey plat.

b. Surface Leases (e.g., well platforms on un-leased tracts, etc.)

A metes and bounds description (or other valid description) must be provided for the area encumbered by a surface lease. This description must be in increments of not less than one acre for the area surrounding a platform or structure, with the point of beginning, well location, and other structures on the leased site identified and properly located by coordinates. The point of reference from either the center or the corner of a platform or structure must be specified, with coordinates given at one or more points on the Texas State Plane Coordinate System of 1927 or 1983.

c. Sub-Surface Easements (e.g., directionally drilled well bores, etc.)

Sub-surface easements for directionally drilled well bores shall consist of a corridor having a ten (10) foot radius around the directionally drilled well bores as it is shown by an as-built directional well survey. Directional well surveys shall show the following information: surface location (as described in item B.1.b., above), sub-surface elevation of each angle point, and the bottom hole location as shown on well bore log. These items shall be identified by a value given at not less than one point on any locative document, referenced to the Texas State Plane Coordinate System of 1927 or 1983.

2. Projects Across (Rights-of-Way) State-owned Upland Property, or the state-owned portion of a river, creek, stream, or bayou above the limit of tidal influence:

a. Upland Tract (State Fee Lands):

For new project applications, information provided for projects on state-owned upland tracts shall include the beginning and end points of the easement centerline, identified by coordinates on the Texas State Plane Coordinate System of 1927 or 1983, and shall include course and distance of all segments of the proposed easement centerline. Course and distance from one end of the easement to the nearest survey corner or subdivision survey corner shall be included, along with the survey name (original grantee), and as applicable, survey or section number, block number, township number, subdivision name, lot or tract number, and abstract number of all surveys abutting the ROW easement.

At completion of construction, or at time of renewal, an as-built plat or confirmation survey (which ever is applicable) must be submitted. This plat must give bearing and distance between angle points along the easement route. In the event no angle points exist along the course of the ROW, the plat shall provide a minimum of one identified point for each 1,000 feet of ROW length. ROW's less than 1,000 feet long but greater than 500 feet require one mid-point to be identified on the survey plat.

b. Crossing the State-owned portion of a river, creek, stream, or bayou above the limit of tidal influence

Information provided for projects crossing non-tidal state-owned rivers, creeks, streams, or bayous shall include an identification of the stream or water body by local and any other names known (historic, from topographic or other maps, etc.). In addition, the beginning and end points of the easement centerline, identified by coordinates on the Texas State Plane Coordinate System of 1927 or 1983, and shall include course and distance of all segments of the easement centerline. Course and distance from one end of the easement to the nearest survey corner or subdivision survey corner shall be included, along with a cross section or profile of the crossing between the top of the high banks, survey name (original grantee), and as applicable, survey or section number, block number, township number, subdivision name, lot or tract number, and abstract number of all surveys abutting the ROW easement.