



Travis County Commissioners Court Agenda Request

Meeting Date: March 25, 2014

Prepared By: Greg Chico **Phone #:** (512) 854-4659

Division Director/Manager: Charles Bergh, Parks Director

Stephen M. Manilla
Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Todd, Precinct Two

AGENDA LANGUAGE: Consider and take appropriate action in scheduling a public hearing (in accordance with Chapter 26 of the Texas Parks and Wildlife Code) for April 29, 2014 to receive comments regarding the pending conveyance of a Transmission Line Easement to the City of Austin on, over, and across 7.46 acres of land located within Northeast Metro Park in Precinct Two -- for installation, operation, and maintenance of high-voltage electrical utility lines by Austin Energy -- as set forth under an Agreed Final Judgment in County Court at Law No. 1, wherein the subject property is being obtained via condemnation under the eminent domain laws of the State of Texas.

BACKGROUND/SUMMARY OF REQUEST:

In a letter dated May 5, 2008, Austin Energy advised Travis County of its intent to acquire an electrical utility easement on a strip of land area adjacent to an existing and long-established LCRA utility easement spanning Northeast Metro Park. Since mid-2008, County staff has worked diligently with Austin Energy representatives to address numerous issues associated with the infrastructure improvements proposed by the City of Austin. Many discussions and negotiations have transpired, to include evaluation of alternative routings, size adjustments of the desired easement area, and various conditions to mitigate any detrimental effects of the proposed electrical lines. Additionally, as the easement area was being pursued for acquisition under the threat of condemnation, County staff and the Commissioners Court made repeated counter-offers and counter-proposals -- again with the intent of diminishing potentially adverse impacts to the park. Just compensation amounts proffered by both parties ranged considerably (from approximately \$153,000 to just over \$500,000), based on widely disparate fair market appraisals of the easement area.

The inability of the two parties to reach an amicable resolution culminated in a Special Commissioners Hearing held on January 29, 2013 where the City of Austin, as Condemnor, successfully used its powers of eminent domain to acquire the property from Travis County, as Condemnee. Travis County filed a timely Appeal and Objections to the findings on February 12, 2013. Continued negotiations between the parties throughout 2013 ultimately led to Cause No. C-1-CV-12-010606,

stipulating an agreed conveyance with \$503,830 as final settlement for the taking of real property, and associated damages resulting from Austin Energy use of the condemned property upon the adjacent, County-owned parkland.

STAFF RECOMMENDATIONS:

Staff recommends setting a public hearing date of April 29, 2014, to: (1) provide a forum to receive public input regarding the proposed sale of easement rights; and (2) satisfy Chapter 26 requirements of Texas Parks and Wildlife regulations regarding disposition of real property parkland interests.

ISSUES AND OPPORTUNITIES:

If conducted as proposed, the public hearing would enable citizen input and facilitate dissemination of information regarding the court-ordered and directed conveyance of the Transmission Line Easement area and rights. Travis County staff has worked for several years to ensure that any negative resultants from the proposed utility lines are minimized with regard to the public use and enjoyment of a significant County asset serving populations throughout the metropolitan area. A public hearing is also required by law prior to final resolution of the matter between Travis County and the City of Austin.

FISCAL IMPACT AND SOURCE OF FUNDING:

There is no anticipated direct fiscal impact to Travis County anticipated by conducting a public hearing under provisions of Chapter 26 (as explained above). If the sale of easement rights were to transpire, Travis County would receive funds in the amount of \$503,830, as agreed and attributable to the purchase of real property, as well as damages associated with the deleterious effects stemming from the City of Austin condemnation action, subsequent taking, their future development / construction activities, and eventual installation of overhead electrical lines.

ATTACHMENTS/EXHIBITS:

Exhibit "A" -- Proposed Transmission Line Easement area (within NE Metro Park); field note legal description

Exhibit "B" -- Sketch of 7.46 acre proposed easement area

Exhibit "C" -- Agreed Final Judgment (settlement) between City of Austin and County

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429

CC:

Tom Nuckols	Assistant County Atty.	TCAO	(512) 854-9513
Gary Martin	Assistant County Atty.	TCAO	(512) 854-9510
Chris Gilmore	Assistant County Atty.	TCAO	(512) 854-9455
Charles Bergh	Parks Director	TNR	(512) 854-9408
Robert Armistead	Parks Manager	TNR	(512) 854-9831
Greg Chico	Real Estate Manager	TNR	(512) 854-4659
Mike Martino	Real Estate Rep.	TNR	(512) 854-7646

SM:CB:gc

3105 - Public Works/ROW - Agenreq262



Travis County, Texas
To
City of Austin (Austin Energy)
Transmission Line Easement

EXHIBIT "A"

SURVEY PLAT OF A 7.46 ACRE, 100 FOOT WIDE STRIP OF LAND, (325173 SQUARE FEET), IN THE THOMAS MOORE SURVEY NUMBER 44, ABSTRACT NUMBER 526 AND IN THE WILLIAM CALDWELL SURVEY NUMBER 66, ABSTRACT NUMBER 162, TRAVIS COUNTY, TEXAS, SAID 7.46 ACRE STRIP OF LAND BEING OUT OF THAT CALLED 339.82 ACRES OF LAND DESCRIBED TO TRAVIS COUNTY, TEXAS, IN THAT CERTAIN GENERAL WARRANTY DEED AS RECORDED IN VOLUME 13131, PAGE 3751, REAL PROPERTY RECORDS TRAVIS COUNTY, SAID 7.46 ACRE TRACT OF LAND BEING SHOWN ON THE ATTACHED SKETCH LABELED EXHIBIT "B" AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOW:

COMMENCING at a one-half inch iron rod found at the base of an eighteen inch Pecan tree for the east corner of that called 5.810 acres of land described to Lora Lee Lockhart tract in that certain General Warranty Deed With Vendor's Lien as recorded in Document 2003047352, Official Public Records Travis County, Texas, same being the southeast corner of that called 157.814 acre tract of land described to Sun Communities Texas Limited Partnership, a Michigan Limited Partnership in that certain Special Warranty Deed as recorded in Volume 12720, Page 458, Real Property Records Travis County, Texas, and a point on the northwest line of the said 339.82 acre tract of land, same being the apparent common corner of the said Alexander Walters Survey Number 67, Abstract Number 791, the Thomas Moore Survey Number 44, Abstract Number 526, the William Caldwell Survey Number 66, Abstract Number 162 and the Nathan Moore Survey Number 45, Abstract Number 512;

THECNE South 26°05'08" West, along the common dividing line of the said Lockhart tract of land and the said Travis County, Texas, tract of land, same being the apparent common dividing line of the said Walters Survey and the said Thomas Moore Survey, a distance of 523.95 feet to a calculated point for the POINT OF BEGINNING of and northwest corner of the herein described 7.46 acre tract of land;

THENCE North 86°55'22" East, through said 339.82 acre tract of land, coincident with the south line of an existing Lower Colorado River Authority transmission line easement as recorded in Volume 653, Page 342, of the Deed Records of Travis County, Texas, a distance of 3253.85 feet to a calculated point for the northeast corner of the herein described 7.46 acre tract of land, same being a point on the southeast line of the said 339.82 acre tract of land and a point on the northwest line of that called 97 ½ acre tract of land left to Mary Belle Brackett, Alma M. Kilian, and Edan M. Kilian as described in the Last Will and Testament of Martha Kilian recorded in Document Number 2003203549 Official Public Records Travis County, Texas, said 97 ½ acres

(SURVEY PLAT OF A 7.46 ACRE, 100 FOOT WIDE STRIP OF LAND, (325173 SQUARE FEET), IN THE WILLIAM CALDWELL SURVEY NUMBER 66, ABSTRACT NUMBER 162, TRAVIS COUNTY, TEXAS)

being described by metes and bounds to G. J. Kilian in that certain Warranty Deed as recorded in Volume 955, Page 46, Deed Records Travis County, Texas, and from this point a five-eighths inch iron rod found for the northwest corner of the said Kilian tract of land, same being a point on the southeast line of the said 339.82 acre tract of land and the southwest corner of that called 60.677 acre tract of land described to The Whitehead By-Pass Trust in that certain Warranty Deed as recorded in Volume 11621, Page 639, Real Property Records Travis County, Texas, bears North 27°48'30" East, a distance of 261.29 feet;

THENCE South 27°48'30" West, along the common dividing line of the said 339.82 acre tract of land and the said Kilian tract of land a distance of 116.52 feet to a calculated point for the southeast corner of the herein described to 7.46 acre tract of land and from this point a concrete monument found with an inverted nail for the southwest corner of the Kilian tract of land, same being a point on the southeast line of the said 339.82 acre tract of land bears South 27°48'30" West, a distance of 1031.57 feet;

THENCE South 86°55'22" West, through said 339.82 acre tract of land and 100 foot perpendicular distance from and parallel to the said Lower Colorado River Authority transmission line easement a distance of 3249.83 feet to a calculated corner for the southwest corner of the herein described 7.46 acre tract of land, same being a point on the common dividing line of the said Travis County, Texas, 339.82 acre tract of land and the said Lora Lee Lockhart 5.810 acre tract of land and from this point a one-half inch iron rod found for the south corner of the said Lockhart tract of land and an exterior angle corner of the said 339.82 acre tract of land bears South 26°05'08" West, a distance of 386.10 feet;

THENCE North 26°05'08" East, along the common dividing line of the said Lockhart tract of land and the said 339.82 acre tract of land a distance of 114.52 feet to the **POINT OF BEGINNING** and containing 7.46 acres or (325173 square feet) of land more or less.

BEARING BASIS: NAD83, TEXAS CENTRAL ZONE, 4203, per GPS observation.

Reference the attached sketch marked **EXHIBIT "B"**.

I hereby certify that these field notes were prepared from an on the ground survey made under my supervision in January 2009.

Prepared By: **AUSTIN ENERGY**

Robert C. Steubing 01/28/09
Robert C. Steubing
Registered Professional Land Surveyor No. 5548



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Scale 1" = 500'

EXHIBIT "B"

SKETCH TO ACCOMPANY FIELD NOTE DESCRIPTION OF A 7.46 ACRE (325173 SQ. FT.) ELECTRIC LINE EASEMENT IN TRAVIS COUNTY, TEXAS, OUT THE THOMAS MOORE SURVEY NO. 44, ABSTRACT NUMBER 526 AND THE WILLIAM CALDWELL SURVEY NO. 66, ABSTRACT NUMBER 162.

NOTE: REFERENCE METERS AND BOUNDS DESCRIPTION LABELED "EXHIBIT A"

NATHAN MOORE SURVEY NO. 45
 ABSTRACT NUMBER 512
 Sun Communities Texas Limited Partnership
 Special Warranty Deed
 12720/458 RPRTCT
 Called: 157.814 Acres

Travis County, Texas
 General Warranty Deed
 13131/3751 OPRCTCT
 Called: 339.82 Acres

WILLIAM CALDWELL SURVEY NO. 66
 ABSTRACT NUMBER 162

The Whitehead By-Pass Trust
 Warranty Deed 11621/639 RPRTCT
 Remainder Called: 60.677 Ac

Lisa Lee Lambhart
 General Warranty Deed
 With Vendor's Lien
 12720/458 OPRCTCT
 Called: 6.993 Acres

Travis County, Texas
 General Warranty Deed
 13198/1500 OPRCTCT
 Called: 9.21 Acres

Mary Bella Brackett, Et Al
 Last Will and Testament
 Doc# 2003203549 OPRCTCT
 G. J. Killan
 Warranty Deed 955/46 DRCTCT
 Remainder Called: 97 1/2 Ac

Travis County, Texas
 General Warranty Deed
 13131/3751 OPRCTCT
 Called: 339.82 Acres

NUM	BEARING	DISTANCE
L1	N27°48'30"E	281.29'
L2	S27°48'30"W	116.52'
L3	S28°05'08"W	366.10'
L4	N28°05'08"E	114.52'

THOMAS MOORE SURVEY NO. 44
 ABSTRACT NUMBER 526

LEGEND:

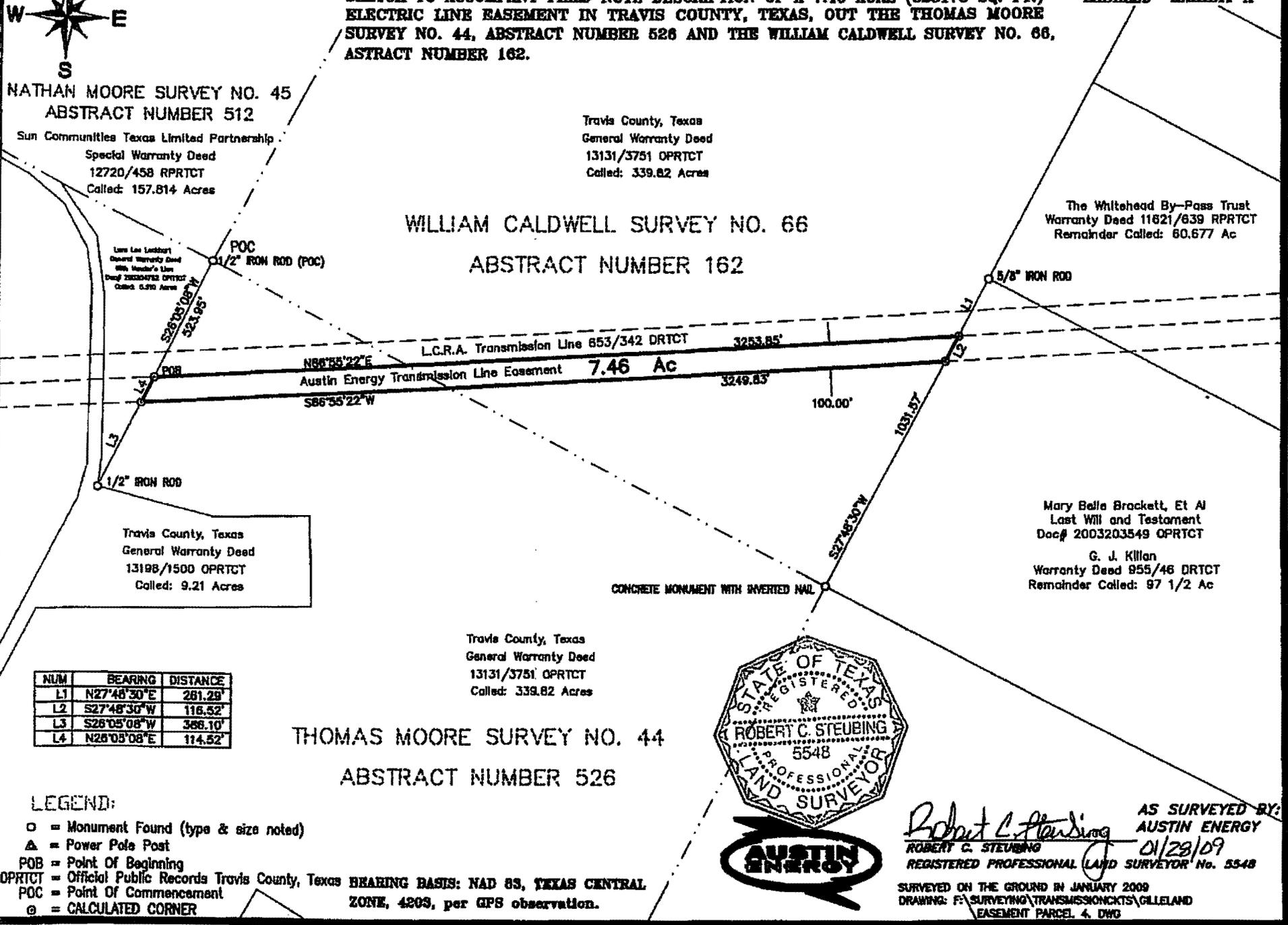
- = Monument Found (type & size noted)
- ▲ = Power Pole Post
- POB = Point Of Beginning
- OPRTCT = Official Public Records Travis County, Texas
- POC = Point Of Commencement
- ⊙ = CALCULATED CORNER

BEARING BASIS: NAD 83, TEXAS CENTRAL ZONE, 4209, per GPS observation.



AS SURVEYED BY:
 AUSTIN ENERGY
 ROBERT C. STEUBING
 REGISTERED PROFESSIONAL LAND SURVEYOR No. 5548
 01/28/09

SURVEYED ON THE GROUND IN JANUARY 2009
 DRAWING: F:\SURVEYING\TRANSMISSIONCKTS\GILLELAND
 EASEMENT PARCEL 4. DWG



distribution and transmission easement associated with the 138 KV transmission circuit for the “Gilleland to Techridge Transmission Line”, such Transmission Line Easement to be taken from the Condemnee, through condemnation of the property located in Travis County Texas, and being more particularly described in Exhibits “A” and “B”, attached hereto and incorporated herein by reference, and incorporated herein as if fully set forth be vested in the City of Austin, Texas, save and except the oil, gas and sulphur which can be removed from beneath the said property without any right whatsoever of ingress to or egress from the surface of said tract of land for the purpose of exploring, developing, drilling or mining of the same; said tract of land being 7.46 acres strip of land that is 100 feet wide and containing 325,173 square feet and is part of a tract of land owned by Travis County, Texas as the Northeast Metropolitan Park (sometimes referred to as the NE Metro Park) in the Thomas Moore Survey No. 44, Abstract No. 526 and in the William Caldwell Survey No. 66, Abstract No. 162, Travis County, Texas described in a General Warranty Deed to Travis County, Texas as recorded in Volume 13131 at page 3751 in the Real Property Records of Travis County, Texas.

(2) That the Judge appointed three disinterested freeholders of Travis County, Texas, as Special Commissioners, who met, took their oaths of office, set a date of hearing before such Special Commissioners, and caused notice thereof to be duly served as prescribed by law, and that the Special Commissioners duly held the hearing on January 29, 2013;

(3) That upon the hearing, the Condemnor, represented by Angela C. Rodriguez, Assistant City Attorney, appeared. Condemnee did not appear either in person or by its attorneys. After such hearing, said Special Commissioners made and rendered their decision and Award in writing, and filed the Award with the Judge of this Court on the 29th day of January, 2013.

(4) That by said written Award, said Special Commissioners awarded to the Condemnees the sum of *One Hundred Seventy One Thousand Six Hundred Twelve Dollars* (\$171,612.00);

(5) That Condemnee Travis County, Texas duly and timely filed its Appeal and Objections to the Commissioners' Findings on February 12, 2013 and caused all Parties to be cited as required by law;

(6) That all proceedings necessary to vest this Court with jurisdiction of the subject matter and the parties of this cause have been instituted, maintained and complied with, as required by law, and that, therefore, this Court has jurisdiction of the parties hereto and of the subject matter set forth in this case;

(7) That Travis County, Texas is the owner in fee simple of the property and such property is used for public purposes and uses;

(8) That the Transmission Line Easement shall be limited to Austin Energy's use for an electric transmission line and the associated structures and any communication wire and facilities necessary and to be used solely for Austin Energy's electric utility operations and as follows:

- a. The easement would not include the rights to place any other utilities, non-electric facilities or third party telecommunications facility and that no third party electrical connections will be made within the easement property on Condemnee's lands; and
- b. the transmission poles to be used on the property will be fabricated metal mono-pole construction with no handholds or other methods of scaling the poles below a certain height in order to avoid and prevent any park users from scaling such poles; and
- c. Any upgrades to the Transmission Line shall not exceed a capacity of 138 KV transmission circuit and the easement shall not be used for multiple lines that cannot be carried and suspended upon the single set of poles; and

d. that Condemnee Travis County waives for the purpose of this Agreed Judgment all claims made in its Appeal and Objections filed February 12, 2013 except for the claim that the present public use of the property as a public park is a Paramount Public Use which claim and objection to jurisdiction is waived for this proceeding only and shall not estop or prevent the application of such doctrine under appropriate circumstances involving other attempts to condemn Travis County properties; and

e. The Condemnor City of Austin will comply with TEX. PARKS AND WILDLIFE CODE CHAPTER 26 PROTECTION OF PUBLIC PARKS AND RECREATIONAL LANDS by holding a hearing on the matter, that the parties agree that there is no feasible and prudent alternative to the use or taking of such land and the project includes all reasonable planning to minimize harm resulting from the use and taking and that Condemnee Travis County will support findings to such effect at such a hearing pursuant to TEX. PARKS AND WILDLIFE CHAPTER 26.

(9) That Condemnee Fee Owners have agreed to accept the sum of *Five Hundred Three Thousand Eight Hundred Thirty and 00/100 Dollars* (\$503,830.00) as settlement for the taking of the herein described real property and damages resulting from use of such condemned property and to the remaining property not taken;

(10) The signatories of the respective parties specifically represent that they are authorized by the governmental authorities to approve this Agreed Judgment and that the parties have the rights and capacities to perform the acts contemplated by this Agreed Judgment; and

(12) That all costs of Court incurred herein should be taxed against the Condemnor which costs shall be paid only to the County Clerk of Travis County, Texas.

WHEREAS all parties have agreed and reached a compromise agreement that the sum of *Five Hundred Three Thousand Eight Hundred Thirty and 00/100 Dollars* (\$503,830.00), together with any interest accruing on those sums while on deposit with the Court, is the compensation and the amount of damages to which the Condemnee is entitled by virtue of the condemnation of the described herein on the date said property interests were condemned,

WHEREAS the compromise agreement shall be paid by as follows:

- A. Release of and payment to Travis County the balance of the *One Hundred Seventy One Thousand Six Hundred Twelve and 00/100 Dollars* (\$171,612.00) deposited in the registry of the Court on March 13, 2013;
- B. Payment of *Three Hundred Thirty Two Thousand Two Hundred Eighteen and 00/100 Dollars* (\$332,218.00) directly from the City of Austin to Travis County as the balance of the agreed compensation referred to above.

Upon due consideration the Court further finds and determines the following:

- (1) That all proceedings necessary to vest this Court with jurisdiction of the subject matter and the parties of this cause have been instituted, maintained and complied with, as required by law, and that, therefore, this Court has jurisdiction of the parties hereto and of the subject matter set forth in this case;
- (2) That Condemnee Travis County, Texas is the owner in fee simple of the subject property, and that the City of Austin, Texas, as Condemnor, acting on the behalf of Austin Energy is condemning and acquiring under and by virtue of these condemnation proceedings, the easement rights herein described, and that the Condemnor is authorized to condemn said easements upon the property;

(3) That from the pleadings, evidence and the agreement of the parties, Condemnees should have and recover of and from Condemnor the sum and amount of *Five Hundred Three Thousand Eight Hundred Thirty and 00/100 Dollars* (\$503,830.00) together with any interest accruing the portions of such total sums previously deposited with the Court and during the time while on deposit with the Court;

(4) That Condemnor, in turn, should have and recover from Condemnees as more specifically set forth herein, the real property and real property rights sought by these proceedings and set forth in the First Amended Petition filed with the Judge of this Court on November 15, 2012 save and except as limited and modified in this Agreed Final Judgment and as described above;

(5) That on the payment to Condemnees of the sums and amount of *Five Hundred Three Thousand Eight Hundred Thirty and 00/100 Dollars* (\$503,830.00), together with any interest accruing on said sum on deposit with the Court, Condemnor shall stand discharged and relieved of its constitutional obligation to pay for the permanent and temporary easement rights taken in these proceedings; and

(6) That except as set forth above, all costs of Court incurred herein should be taxed against the party incurring same.

IV

It is therefore ORDERED, ADJUDGED and DECREED that Condemnor does have and recover of and from the Condemnee the real property and real property rights sought in the property herein described as set out above and as described in the First Amended Petition filed with the Judge of this Court on November 15, 2012 save and except as limited and modified in this Agreed Final Judgment and as described above.

It is further ORDERED that Condemnee have judgment against Condemnor for the sum of *Five Hundred Three Thousand Eight Hundred Thirty and 00/100 Dollars* (\$503,830.00), together with any interest accruing on that portion of such sums while on deposit with the Court, for the real property and real property rights sought herein and condemned; for damages to Condemnees' remaining lands; and in settlement of any and all claims, demands or causes of action Condemnees may have against Condemnor.

V

It is further ORDERED, ADJUDGED and DECREED that the real property and real property interests described herein in and in Exhibits "A" and "B" attached hereto, are hereby vested in the Condemnor.

VI.

Except as otherwise provided above, it is further ORDERED, ADJUDGED and DECREED that this judgment is a Final Judgment and disposes of and resolves all claims between the parties.

VII.

It is further ORDERED, ADJUDGED and DECREED that all sums remaining unpaid according to the terms of this judgment for more than ninety (90) days shall accrue interest at the rate of 5% per cent per annum until paid.

SIGNED this _____ day of February, 2014.

PRESIDING JUDGE

APPROVED FOR ENTRY:

FOR THE CONDEMNOR CITY OF AUSTIN, TEXAS

Meitra Farhadi
Assistant City Attorney

FOR THE CONDEMNEE TRAVIS COUNTY, TEXAS

Gary Duncan Martin
Assistant Travis County Attorney