

THE STATE OF TEXAS

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COUNTY OF FORT BEND

POSSESSION AND USE AGREEMENT

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

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

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

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

- C. Easements, restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances and encumbrances for taxes and assessments (other than liens and conveyances) presently of record in the Official Public Records of Fort Bend County, Texas, that affect the property, but only to the extent that said items are still valid and in force and effect at this time.
- 5 In the event the County institutes eminent domain proceedings, following provisions shall apply:
- A. The Owner expressly acknowledges that the proposed Project is for a valid public use and voluntarily waives any right the Owner has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.
- B. The County will not be liable to the Owner for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award.
- C. The Owner reserves all rights of compensation for the title and interest in and to the Property which the Owner holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Owner's rights to receive full and just compensation as allowed by law for all of the Owner's interests in and to the Property to be acquired by the County, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Owner's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The County's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Owner in eminent domain proceedings. There will be no project impact upon the appraised value of the Property.
- D. This Agreement shall continue to remain in effect until the County acquires title to the Property either by negotiation, settlement, or final court judgment.
- 6 The Owner reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the County to take and use all other minerals and materials thereon, and thereunder.
- 7 The undersigned Owner agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the County takes title to the Property.
- 8 This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.

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

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

EXECUTED this the 16th day of March, 2021.

RK PARTNERS HIP

By:

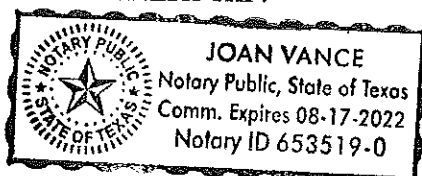
Joseph Kirk
JOSEPH KIRK PARTNER
Name, Title

THE STATE OF TEXAS

COUNTY OF FT. BEND

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This instrument was acknowledged before me on this 16th day of MARCH, 2021, by JOSEPH KIRK, PARTNER, on behalf of RK PARTNERS HIP.



(NOTARY SEAL)

Joan Vance
Notary Public, State of _____

AGREED to and ACCEPTED on this the _____ day of _____, _____.

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

By: _____
KP George, County Judge

THE STATE OF TEXAS §
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COUNTY OF FORT BEND §

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

Notary Public, State of Texas

(NOTARY SEAL)

EXHIBIT A

County: Fort Bend
Highway: Moore Road
Project Limits: 5th Street to Court Road

PROPERTY DESCRIPTION FOR PARCEL NO. 2

BEING a 0.0100 of an acre (437 square feet) parcel of land located in the W. T. Neal Survey, Abstract Number 64, Fort Bend County, Texas, and out of and a part of a called 1.813 acre tract conveyed to R. K. Partnership by deed recorded under County Clerk's File Number 9636962 of the Official Public Records, Fort Bend County, Texas. Said 0.0100 of an acre parcel being more particularly described as follows (bearings are based on the Texas Coordinate System of 1983, South Central Zone):

COMMENCING at a found reference 1-1/4 inch iron pipe located South 48° 07' 24" East, 9.00 feet from the westerly corner of a called 2.235 acre tract conveyed to Blanca Estela Gomez by deed recorded under County Clerk's File Number 2005138071 of the Official Public Records, Fort Bend County, Texas, in the northeasterly line of a widening of 5th Street (width varies) as widened by Clerk's File Number 9571557, Official Public Records, Fort Bend County, Texas;

THENCE, South 48° 07' 24" East, with the southwesterly line of said 2.235 acre tract and the northeasterly line of said 5th Street widening, a distance of 11.00 feet to a point for the easterly corner of said 5th Street widening and the northeasterly corner of said 1.813 acre tract;

THENCE, South 41° 45' 55" West, with the southeasterly line of said 5th Street widening and the northwesterly line of said 1.813 acre tract, a distance of 167.14 feet to a 5/8 inch iron rod with cap stamped "Cobb Fendley & Associates" set marking the POINT OF BEGINNING and northerly corner of the herein described tract;

THENCE, South 03° 42' 20" West, over and across said 1.813 acre tract, a distance of 47.24 feet to a 5/8 inch iron rod with cap stamped "Cobb Fendley & Associates" set in the easterly right-of-way of Moore Road (70 feet wide) as widened by Clerk's File Number 9571557, Official Public Records, Fort Bend County, Texas, and in the westerly line of said 1.813 acre tract and marking the southerly corner of the herein described tract;

THENCE, North 34° 21' 15" West, with the easterly right-of-way line of said Moore Road and the westerly line of said 1.813 acre tract, a distance of 30.00 feet to a point for in the southeasterly line of said 5th Street widening and for the northwesterly corner of said 1.813 acre tract and the herein described tract;

EXHIBIT A

THENCE, North 41° 45' 55" East, with the southeasterly line of said 5th Street widening and the northwesterly line of said 1.813 acre tract, a distance of 30.00 feet to the POINT OF BEGINNING and containing 0.0100 of an acre (437 square feet) of land.

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

This survey was performed without the benefit of a title commitment, easements, covenants and/or restrictions may exist which are not shown hereon.

Cobb, Fendley & Associates, Inc.
TBPLS Firm Registration No. 100467
13430 Northwest Freeway, Suite 1100
Houston, Texas 77040
(713) 462-3242



W.T. NEAL SURVEY
A-64

(A)

L1
L2
Fnd. 1-1/4" I.P.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 48°07'24" E	9.00'
L2	S 48°07'24" E	11.00'

S41°45'55"W
167.14'

EXISTING R.O.W.
CITY OF MISSOURI CITY
C.F.NO. 9571557
O.P.R.F.B.C.

5TH STREET
(R.O.W. VARIES)

PARCEL NO. 2
0.0100 ACRES
(437 SQ. FT.)

P.O.B.
SET

S03°42'20"W
47.24'

PROPOSED
R.O.W.

N41°45'55"E
30.00'

SET

Fnd. 5/8" I.R.

N34°21'15"W
30.00'

EXISTING R.O.W.

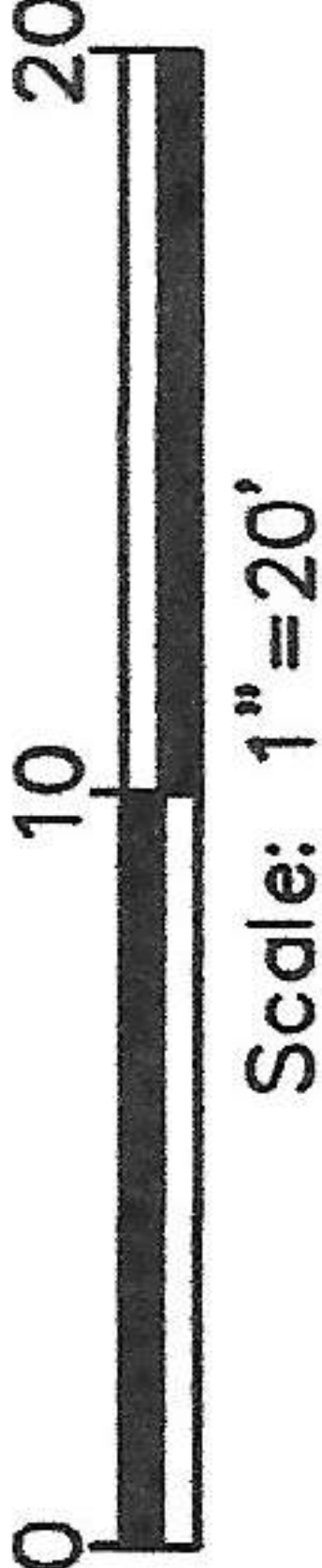
40'

MOORE ROAD
(70 FEET WIDE)
CENTERLINE

CITY OF MISSOURI CITY
C.F.NO. 9571557
O.P.R.F.B.C.

(A)
BLANCA ESTELA GOMEZ
CALLED 2.235 ACRES
FILE NO. 2005138071
O.P.R.F.B.C.

R.K. PARTNERSHIP
CALLED 1.813 ACRES
FILE NO. 9636962
O.P.R.F.B.C.



NOTES:

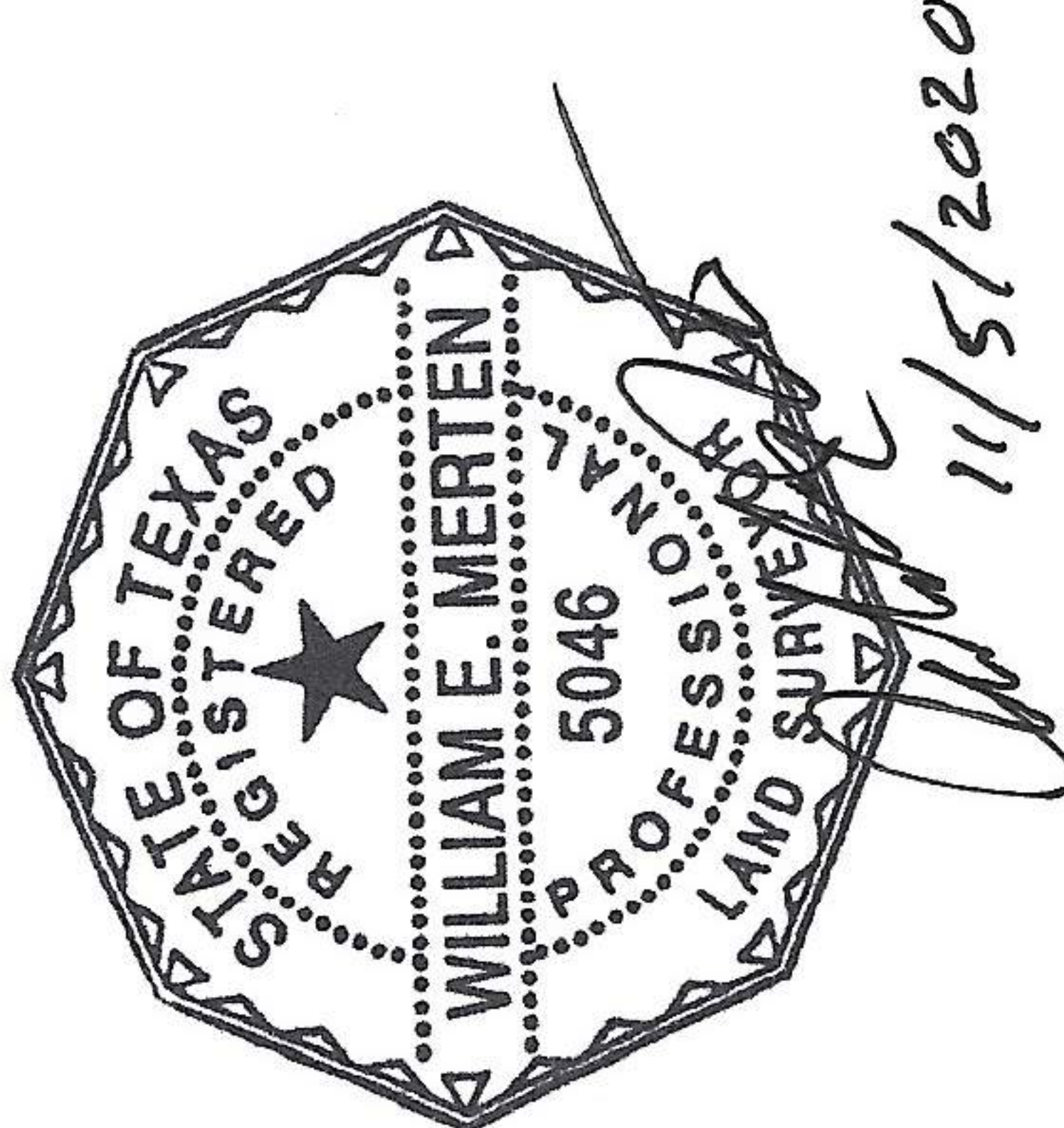
Bearings are based on the Texas Coordinate System of 1983, South Central Zone.

This survey was performed without the benefit of a title commitment, easements, covenants and/or restrictions may exist which are not shown hereon.

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

Field work was performed during the months of August thru September, 2020.

"Set" denotes a set 5/8" iron rod with cap stamped "Cobb Fendley & Associates"



CobbFendley

TBPE Firm Registration No. 274
TBPLS Firm Registration No. 100467
13430 Northwest Freeway, Suite 1100 Houston, Texas 77040
713.462.3242 | fax 713.462.3262 | www.cobbfendley.com

DATE: 11-5-2020	SHEET 1	OF 1	REVISED
SCALE: 1"=20'	F.B. NO. 3134		
DRAWN BY: BM	PROJECT NO. 2011-014-01		