

POSSESSION AND USE AGREEMENT FOR TRANSPORTATION PURPOSES

STATE OF TEXAS

§

Parcel No.: 1

§

COUNTY OF WILLIAMSON

§

Project: CR 401/CR 404

This Possession and Use Agreement For Transportation Purposes (the "Agreement") between WILLIAMSON COUNTY, TEXAS ("County"), and **PREWITT FARMS, LTD., a Texas limited partnership and ZIZINIA WILLIAMSON COUNTY, LTD., a Texas limited partnership** (the "Grantor" whether one or more), grants to the County, their contractors, agents and all others deemed necessary by the County, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a portion of CR 401 and CR 404 roadway and related appurtenances, drainage and utility relocations (the "Roadway Construction Project"). The property subject to this Agreement is described more fully in field notes, plat map, or other description attached as "Exhibit A" and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the County which is set forth in Paragraph 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells, and conveys to the County the right of entry and exclusive possession and use of the Property for the purpose of constructing a roadway, utility adjustments, 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 Roadway Construction Project. This Possession and Use 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 Roadway Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation, and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the County will tender to the Grantor the sum of ONE HUNDRED SEVENTY-SIX THOUSAND and 00/100 Dollars (\$176,000.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The County will be entitled to take possession and use of the Property upon tender of payment as set out herein, subject to the conditions in paragraph 14 below, if any.

The parties agree that the sum tendered represents 100% of the County's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the County's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the County in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the County has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment

for the difference and, upon written notice from the County, the Grantor will promptly refund the overpayment to the County.

3. The effective date of this Agreement will be the date on which payment pursuant to Paragraph 2 above was tendered to the Grantor by the County, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
4. The Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances except as disclosed to Grantee in that certain title commitment numbered GF-21061675, issued December 10, 2021 by Texas Title Insurance Company/Longhorn Title (and any subsequent updates prior to the Effective Date), and that proper releases, if any, will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further 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, claims or encumbrances affecting the Property. The above made warranties are made by Grantor and accepted by County subject 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 Williamson 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. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the County in the Property, for negotiation or eminent domain proceeding purposes, will be July 1, 2022. Should the Special Commissioners' Award be greater than the amount paid in paragraph two (2) above, Grantee shall tender the difference to the registry of the court within (45) days following the filing of the award.
6. This Agreement is made with the understanding that the County will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and other interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor'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 Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), 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 Grantor in the eminent domain proceedings. No beneficial project influence will impact the appraised value of the Property to be acquired. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.

7. In the event the County institutes or has instituted eminent domain proceedings, the County will not be liable to the Grantor 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. Any interest accrual penalties will be deferred by the County until 90 days after entry of judgment.
8. The purpose of this Agreement is to allow the County to proceed with its Roadway Construction Project without delay and to allow the Grantor to have the use at this time of a percentage of the estimated compensation for the County's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Roadway Construction Project is for a valid public use and voluntarily waives any right the Grantor 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 Roadway Construction 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.
9. The Grantor 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.
10. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property until the Effective Date, including prorated taxes until the Effective Date for the year in which the County takes title to the Property.
11. Notwithstanding the acquisition of right of possession to the Property by the County in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court within forty-five (45) days after filing of said Award, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the County acquires title to the Property either by negotiation, settlement, or final court judgment.
12. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
13. It is agreed the County will record this document.
14. Other conditions: None
15. By its authorized signature below the following Tenants which have a leasehold interest in the Property hereby consent in all things to Grantee taking exclusive and sole possession of the Property pursuant to the terms of this Agreement, and to Grantor receiving the consideration recited herein:

Tenants:

Brandon Roznovak

At no time during the possession of the Property by County for the purposes described herein shall Grantor be denied reasonable access and/or ingress to or egress from the remainder of Grantor's land, unless otherwise agreed to in writing in advance.

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the County and its assigns forever, for the purposes and subject to the limitations set forth above.

[signature pages follow]

GRANTORS:

PREWITT FARMS LTD.,
a Texas limited partnership

By: Edith Renee Prewitt

Name: Edith Renee Prewitt

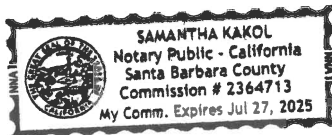
Its: Trustee, General Partner

ACKNOWLEDGMENT

STATE OF ~~TEXAS~~ California (SK)

COUNTY OF Santa Barbara

This instrument was acknowledged before me on this the 17 day of Jan., 2023 by Edith Renee Prewitt, in the capacity and for the purposes and consideration recited herein.



S
Notary Public, State of ~~Texas~~ California
Printed Name: Samantha Kakol
My Commission Expires: 07/27/2025

ZIZINIA WILLIAMSON COUNTY, LTD.,
a Texas limited partnership

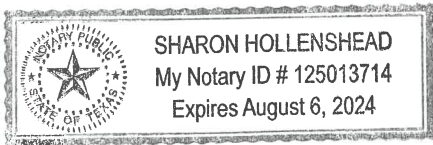
By: [Signature]
Name: ANDREW A. ZIZINIA III
Its: MANAGER

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on this the 12 day of January, 2022 by Andrew A. Zizinia, in the capacity and for the purposes and consideration recited herein.



[Signature]
Notary Public, State of Texas
Printed Name: Sharon Hollenshead
My Commission Expires: 08-06-2024

COUNTY:

WILLIAMSON COUNTY, TEXAS

By: _____
Bill Gravell, Jr.
County Judge

ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF WILLIAMSON**

This instrument was acknowledged before me on this the ___ day of _____, 2022 by Bill Gravell, Jr., County Judge of Williamson County, Texas, in the capacity and for the purposes and consideration recited herein.

Notary Public, State of Texas
Printed Name: _____
My Commission Expires

EXHIBIT "A"

County: Williamson
Parcel No.: 1
Highway: C.R. 401/404
Limits: From: FM 973
To: Intersection of US 79

Page 1 of 4
June 25, 2021

PROPERTY DESCRIPTION FOR PARCEL 1

DESCRIPTION OF A 1.075 ACRE (46,810 SQ. FT.) PARCEL OF LAND LOCATED IN THE W. KINCAID SURVEY, SURVEY NO. 5, ABSTRACT NO. 373, WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF A CALLED 290.77 ACRE TRACT OF LAND, DESCRIBED AS TRACT NUMBER TWO, PARCEL A IN A DEED TO PREWITT FARMS, LTD. A TEXAS LIMITED PARTNERSHIP, RECORDED AUGUST 28, 2007 IN DOCUMENT NO. 2007076169, OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS (O.P.R.W.C.TX.); SAID 1.075 ACRE (46,810 SQ. FT.) PARCEL, AS SHOWN ON A PLAT PREPARED BY SAM, LLC, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 3-inch iron pipe found, for an interior ell corner of said remainder of a called 290.77 acre tract, same being the northwest corner of a called 70 acre tract of land, described in a deed to Taylor Texas Holdings, Inc., recorded in Document No. 2008053881, O.P.R.W.C.TX.;

THENCE S 21°57'24" E, with the common line of said remainder of a called 290.77 acre tract and said 70 acre tract, a distance of 2,430.64 feet to a 5/8-inch iron rod with an aluminum cap stamped "WILLIAMSON COUNTY" (Surface Coordinates: N=10,181,801.74, E=3,204,230.70) set 121.72 feet right of County Road 401 (C.R. 401) Engineer's Centerline Station (E.C.S.) 206+16.36 on the proposed east right-of-way line of C.R. 401, for the northeast corner and the **POINT OF BEGINNING** of the parcel described herein;

1) **THENCE** S 21°57'24" E, with the proposed east right-of-way line of said C.R. 401, a distance of 223.67 feet to a 5/8-inch iron rod with an aluminum cap stamped "WILLIAMSON COUNTY" set 124.77 feet right of C.R. 401 E.C.S 203+83.57 on the existing north right-of-way line of U.S. 79, a 200 foot wide right-of-way, as described to the State of Texas in Volume 372, Page 368, Deed Records of Williamson County, Texas (D.R.W.C.TX.), and as depicted in TXDOT right-of-way strip map CSJ 204-03-12 dated December 1951, for the southwest corner of said 70 acre tract, same being the southeast corner of said remainder of a called 290.77 acre tract and of the parcel described herein, from which a 1/2-inch iron rod with a plastic cap stamped "HOLT & CARSON" found bears N 72°13'24" E, a distance of 23.82 feet;

2) **THENCE** S 66°58'03" W, departing the proposed east right-of-way line of said C.R. 401, with the existing north right-of-way line of said U.S. 79, a distance of 207.81 feet to a 5/8-inch iron rod with an aluminum cap stamped "WILLIAMSON COUNTY" set 83.00 feet left of C.R. 401 E.C.S 203+79.61 on the proposed west right-of-way line of said C.R. 401, for the southwest corner of the parcel described herein, from which a Type I concrete monument found on the existing north right-of-way line of said U.S. 79 bears S 66°58'03" W, a distance of 2,114.03 feet;

THENCE departing the existing north right-of-way line of said U.S. 79, with the proposed west right-of-way line of said C.R. 401, over and across said remainder of a called 290.77 acre tract, the following three (3) courses and distances numbered 3-5:

- 3) N 21°56'18" W, a distance of 147.64 feet to a 5/8-inch iron rod with an aluminum cap stamped "WILLIAMSON COUNTY" set 83.00 feet left of C.R. 401 E.C.S 205+27.24, said point being the beginning of a curve to the right,
- 4) With said curve to the right, an arc distance of 80.05 feet, through a central angle 03°34'30", having a radius of 1,283.00 feet, and a chord that bears N 20°09'03" W, a distance of 80.04 feet to a 5/8-inch iron rod with an aluminum cap stamped "WILLIAMSON COUNTY" set 83.00 feet left of C.R. 401 E.C.S 206+02.12, and

EXHIBIT "A"

County: Williamson
Parcel No.: 1
Highway: C.R. 401/404
Limits: From: FM 973
To: Intersection of US 79

Page 2 of 4
June 25, 2021

- 5) N 68°03'42" E, a distance of 205.20 feet to the **POINT OF BEGINNING**, and containing 1.075 acres (46,810 sq. ft.) of land, more or less.

This property description is accompanied by a separate plat of even date.

Bearing Basis:

All bearings shown are based on the Texas Coordinate System, Central Zone, NAD 83/2011. All distances shown are surface and may be converted to grid by dividing by a Surface Adjustment Factor of 1.00012352. Units: U.S. Survey Feet.

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS §

That I, Scott C. Brashear, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, on the date shown below.

Preliminary

SURVEYING AND MAPPING, LLC
4801 Southwest Pkwy
Building Two, Suite 100
Austin, Texas 78735
TX. Firm No. 10064300

06/25/2021 3:19:26 PM
Scott C. Brashear Date
Registered Professional Land Surveyor
No. 6660 – State of Texas

EXHIBIT "A"

CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	03° 34' 30" RT	1,283.00'	80.05'	80.04'	N20° 09' 03" W

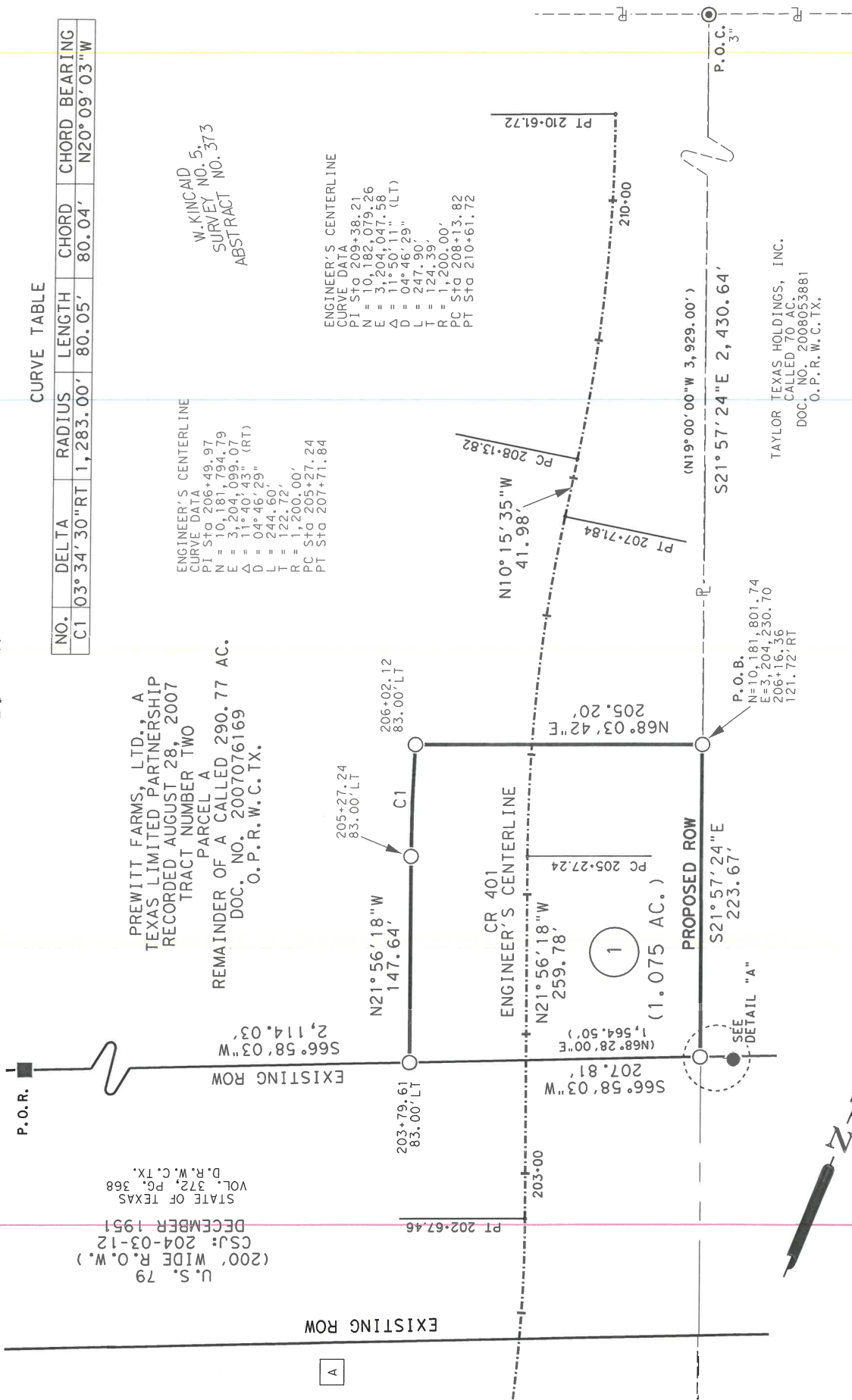
U.S. 79
 (200' WIDE R.O.W.)
 CSJ: 204-03-12
 DECEMBER 1951
 STATE OF TEXAS
 VOL. 372, PG. 368
 D.R.W.C.TX.

PREWITT FARMS, LTD., A
 TEXAS LIMITED PARTNERSHIP
 RECORDED AUGUST 28, 2007
 TRACT NUMBER TWO
 PARCEL A
 REMAINDER OF A CALLED 290.77 AC.
 DOC. NO. 2007076169
 O.P.R.W.C.TX.

W.KINCAID
 SURVEY NO. 5,
 ABSTRACT NO. 373

ENGINEER'S CENTERLINE
 CURVE DATA
 PI StG 206+49.97
 N = 10,181,794.79
 E = 3,204,099.07
 Δ = 11° 40' 43" (RT)
 D = 04° 46' 29"
 L = 244.60'
 T = 122.72'
 R = 1,200.00'
 PC StG 205+27.24
 PT StG 207+71.64

ENGINEER'S CENTERLINE
 CURVE DATA
 PI StG 209+38.21
 N = 10,182,079.26
 E = 3,204,047.58
 Δ = 11° 50' 11" (LT)
 D = 04° 46' 29"
 L = 247.90'
 T = 124.39'
 R = 1,200.00'
 PC StG 208+13.82
 PT StG 210+61.72



TAYLOR TEXAS HOLDINGS, INC.
 CALLED TO AC.
 DOC. NO. 2008053881
 O.P.R.W.C.TX.

P.O.B.
 N=10,181,801.74
 E=3,204,230.70
 206+16.36
 121.72' RT



GRAPHIC SCALE
 SCALE: 1" = 100'
 WILLIAMSON COUNTY, TEXAS

RIGHT-OF-WAY SKETCH
 SHOWING PROPERTY OF
 PREWITT FARMS, LTD., A
 TEXAS LIMITED PARTNERSHIP
 PARCEL 1
 1.075 AC. (46,810 SQ. FT.)

4801 Southwest Parkway
 Building Two, Suite 100
 Austin, Texas 78735
 (512) 447-0575
 Fax: (512) 326-3029
 Texas Firm Registration No. 10064300

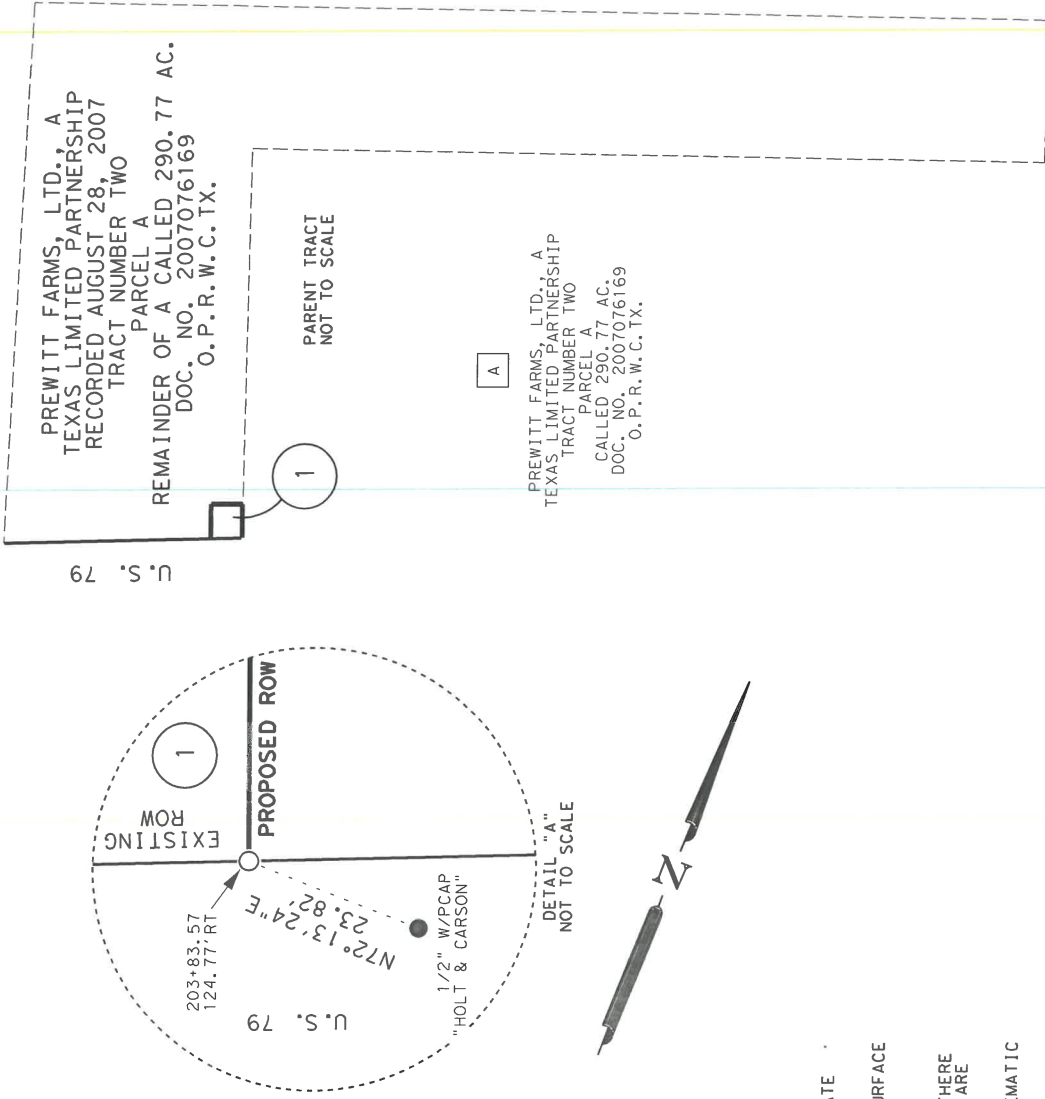


LEGEND

- 5/8" IRON ROD SET WITH ALUMINUM CAP STAMPED "WILLIAMSON COUNTY"
- 1/2" IRON ROD FOUND UNLESS NOTED
- ◊ FENCE POST (TYPE NOTED)
- TYPE I CONCRETE MONUMENT FOUND
- ◻ TXDOT TYPE II BRONZE DISK IN CONCRETE FOUND
- ⊙ 1/2" IRON PIPE FOUND UNLESS NOTED
- ▲ 80D NAIL FOUND
- ⊕ MAGNAIL FOUND
- ⊗ SPINDLE FOUND
- ✕ RAILROAD TIE
- △ CALCULATED POINT
- ℙ PROPERTY LINE
- () RECORD INFORMATION
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCING
- P.O.R. POINT OF REFERENCE
- N. T. S. NOT TO SCALE
- D. R. W. C. TX. DEED RECORDS OF WILLIAMSON COUNTY, TEXAS
- O. R. W. C. TX. OFFICIAL RECORDS OF WILLIAMSON COUNTY, TEXAS
- O. P. R. W. C. TX. OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS
- DISTANCE NOT TO SCALE
- - - DEED LINE (COMMON OWNERSHIP)

- NOTES:**
- ALL BEARINGS SHOWN ARE BASED ON NAD83/2011/NAVD88 TEXAS COORDINATE SYSTEM, CENTRAL ZONE. ALL DISTANCES SHOWN ARE SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY A SURFACE ADJUSTMENT FACTOR OF 1.00012352. ALL COORDINATES SHOWN ARE IN SURFACE AND MAY BE CONVERTED TO GRID BY DIVIDING BY THE SAME FACTOR. PROJECT UNITS ARE IN U.S. SURVEY FEET.
 - THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF TITLE REPORT, THERE MAY BE EASEMENTS OR OTHER MATTERS, RECORDED OR UNRECORDED, THAT ARE NOT SHOWN.
 - C.R. 401 ENGINEER'S CENTERLINE ALIGNMENT DERIVED FROM HNTB. SCHEMATIC RECEIVED BY SAM, LLC. IN MAY, 2021.
 - THIS PLAT IS ACCOMPANIED BY A PROPERTY DESCRIPTION OF EVEN DATE.
- * AREA CALCULATED BY SAM, LLC.

EXHIBIT "A"



PREWITT FARMS, LTD., A TEXAS LIMITED PARTNERSHIP RECORDED AUGUST 28, 2007 TRACT NUMBER TWO PARCEL A
 REMAINDER OF A CALLED 290.77 AC. DOC. NO. 2007076169 O.P.R. W. C. TX.

PARENT TRACT NOT TO SCALE

A

PREWITT FARMS, LTD., A TEXAS LIMITED PARTNERSHIP TRACT NUMBER TWO PARCEL A CALLED 290.77 AC. DOC. NO. 2007076169 O.P.R. W. C. TX.

RIGHT-OF-WAY SKETCH SHOWING PROPERTY OF PREWITT FARMS, LTD., A TEXAS LIMITED PARTNERSHIP PARCEL 1
 1.075 AC. (46,810 SQ. FT.)

4801 Southwest Parkway Building Two, Suite 100 Austin, Texas 78735 (512) 447-0575 Fax: (512) 326-3029 Texas Firm Registration No. 10064300



Preliminary
 06/25/2021 3:19:34 PM

SCOTT C. BRASHEAR REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6660, STATE OF TEXAS

DATE