

POSSESSION AND USE AGREEMENT

STATE OF TEXAS

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§
§

COUNTY OF WILLIAMSON

WHEREAS, PHILIP HOGAN and GINA RAE HOGAN, hereinafter referred to as "GRANTOR", whether one or more, is the owner of that certain piece, parcel or tract of land in Williamson County, Texas, being more particularly described by metes and bounds in Exhibit "A", which is attached hereto and made a part hereof; and

WHEREAS, WILLIAMSON COUNTY, TEXAS, and the STATE OF TEXAS, acting by and through Williamson County, and its contractors and assigns, "collectively GRANTEE", plan to acquire a fee simple interest in the tract(s) of land described in Exhibit "A" (parcel 6), whether through contract and conveyance or through eminent domain proceedings; and

WHEREAS, the GRANTEE must have possession of said-described tract of land for the purposes described below,

Construction of the Highway 183 roadway improvements and utility relocation (Project).

NOW THEREFORE, BE IT KNOWN:

That in consideration of the payment of the sum of ONE MILLION SIX HUNDRED SEVENTY EIGHT THOUSAND SEVEN HUNDRED THIRTY TWO AND 20/100 Dollars (\$1,678,732.20), which compensation amount represents 90% of the estimated compensation for the acquisition of the Property to be acquired and any damages to the remaining property, GRANTOR has GRANTED and CONVEYED and by these presents does GRANT and CONVEY unto the GRANTEE, its employees, agents and assigns an irrevocable right-of-entry, possession, and construction easement, with the right of exclusive possession over, upon, and across those tracts of land described in Exhibit "A".

GRANTOR warrants and represents by, through, and under the GRANTOR, but not otherwise, that the title to the Property is free and clear of all liens and encumbrances on the title to the Property, or that any necessary and proper releases will be executed for the Property prior to or simultaneously with the first payment of funds being disbursed under this agreement. The GRANTOR further agrees to indemnify the GRANTEE from all unreleased or undisclosed liens, claims or encumbrances that are known to GRANTEE and that affect the Property.

It is expressly agreed, acknowledged, and understood that the consideration paid hereunder shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property interests described in Exhibit "A", and any other real property situated on Exhibit "A" or on the remainder property adjacent to Exhibit "A" to be acquired from GRANTOR.

It is expressly agreed, acknowledged, and understood that the easements, rights, and privileges herein granted are assignable and shall be used by the GRANTEE, its employees, agents, and assigns, for the purposes of entering upon the above-described property, before the closing of the contemplated real estate transaction or the acquisition of title through condemnation, and proceeding with surveying, site review and analysis, utility relocation, actual construction on the Project, and all manner of preparation and work attendant thereto. Utility relocation, if any, shall include, but not be limited to, the relocation of water and wastewater lines, electrical lines, cable television lines, telephone lines, gas lines, and their attendant facilities from the existing roadway right-of-way on the property described in Exhibit "A".

The GRANTEE, its employees, agents, and assigns shall have the full and exclusive right to control and use the above-described tracts, including the right to erect and maintain fencing and traffic and pedestrian control and devices and signs, the right to clear trees and vegetation, and the right to excavate, trench, fill, and grade the real property itself.

At no time during the possession of the property by GRANTEE for the purposes described herein shall GRANTOR be denied reasonable access and/or ingress to or egress from the remaining property.

The easement, rights, and privileges herein granted shall automatically terminate upon the contemplated closing of the above-described real estate transaction or the rendition of a final judgment in condemnation proceedings. However, this grant shall survive the termination of any purchase contract agreement and shall also survive any institution of condemnation proceedings.

The parties further agree as follows:

1. That by virtue of the granting of permission to the GRANTEE to take temporary possession of the Property in accordance with this Agreement, GRANTOR does not waive any legal rights or defenses under the Constitution of the United States, the Constitution and Statutes of the State of Texas or any other provisions of the law that GRANTOR may have in connection with the acquisition of any rights to the Property by the GRANTEE.
2. That this Right of Entry, Possession, and Construction Easement is irrevocable by GRANTOR but only valid until sixty (60) business days after the filing of a Special Commissioners' award in the Cause. Thereafter, continued possession, if at all, will be pursuant to a deposit of a Special Commissioners' award according to Texas law governing possession in a statutory eminent domain case.
3. The date of valuation for purposes of determining the value of the just compensation for the Property to be acquired shall be the date of a deposit of a Special Commissioners Award in any applicable condemnation suit for this acquisition.

5. This Agreement shall be binding upon the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. Specifically, Grantee's heirs, devisees, executors, administrators, legal representatives, successors or assigns are bound by terms of this agreement which state that the consideration paid hereunder to Grantee shall be credited against, applied towards, and offset from any consideration to be paid in satisfaction of an agreed purchase price under a contract and conveyance or in satisfaction of the award of the Special Commissioners or subsequent judgment in any condemnation proceeding for the acquisition of the property described herein, whether said Grantee is or is not the owner of said property, now or in the future.
6. The easement, right, and privileges granted herein are exclusive, and GRANTOR covenants that it will not convey any other easement or conflicting rights within the area covered by this grant, other than as set out in that certain waterline easement agreement previously granted to Chisholm Trail Special Utility District which has not been recorded of record, a copy of which is attached hereto as Exhibit "B". This grant shall be binding upon legal representatives, successors, and assigns of GRANTOR for the term of this grant.
7. GRANTEE agrees that once the GRANTOR, in writing, asks for a special commissioner's hearing to be scheduled, both parties will undertake all reasonable efforts to hold a special commissioners' hearing within ninety (90) days after the GRANTOR'S request. Any award that exceeds \$1,678,732.20 will be deposited in the registry of the court within twenty (20) days following the award made by the special commissioners. If the compensation issue is settled through negotiations, a fixed date for receipt of the additional funds, if any, will be agreed upon as part of the negotiation process.

TO HAVE AND TO HOLD the possession of the above-described tracts of land for the purposes and subject to the limitations described above, and GRANTOR warrants that he knows of no persons or business entity owns a present possessory interest in the fee title to the above-described premises other than GRANTOR, and that there are no parties in possession of any portion of the referenced real property as lessees other than identified herein.

[signature page follows]

Executed this the ____ day of _____, 2009.

GRANTOR:


Philip Hogan

Address: _____

Gina Rae Hogan

Address: _____

GRANTEE:
WILLIAMSON COUNTY, TEXAS



County Judge Dan A. Gattis
Williamson County, Texas

Address: 710 Main Street, Suite 101
Georgetown, Texas 78626

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on this the ___ day of _____, 2009 by Philip Hogan, in the capacity and for the purposes and consideration recited herein.

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

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on this the ___ day of _____, 2009 by Gina Rae Hogan, in the capacity and for the purposes and consideration recited herein.

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

STATE OF TEXAS
COUNTY OF WILLIAMSON

This instrument was acknowledged before me on this the ___ day of _____, 2009 by Dan A. Gattis, Williamson County Judge, in the capacity and for the purposes and consideration recited herein.

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

After recording return to:

Don Childs
Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664

EXHIBIT _____

County: Williamson
Parcel No.: 6
Highway: U.S. 183
Limits: From: Riva Ridge Drive
To: State Highway 29

PROPERTY DESCRIPTION FOR PARCEL 6

DESCRIPTION OF A 10.444 ACRE TRACT OF LAND LOCATED IN THE JOHN B. ROBINSON SURVEY, ABSTRACT NO. 521, IN WILLIAMSON COUNTY, TEXAS, BEING A PORTION OF A CALLED 117.15 ACRE TRACT OF LAND, DESCRIBED IN THE DEED TO PHILLIP HOGAN AND WIFE, GINA RAE HOGAN, AS RECORDED IN DOCUMENT NO. 2000007280, OF THE OFFICIAL PUBLIC RECORDS OF WILLIAMSON COUNTY, TEXAS, SAID 10.444 ACRE TRACT, AS SHOWN ON A RIGHT-OF-WAY SKETCH PREPARED BY SAM, INC. FOR THIS PARCEL, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8-inch Iron rod with a "SAM Inc." aluminum cap set in concrete, 220.00 feet right of U.S. Highway 183 Engineer's Centerline Station 109+11.83, being in the proposed west right-of-way line of U.S. Highway 183, a varying width right-of-way, being in the north line of said 117.15 acre tract and the south line of a called 10.86 acre tract of land, described in the deed to Capitol Aggregates, Ltd., as recorded in Document No. 2003101293, of the Official Public Records of Williamson County, Texas, being the west corner and the **POINT OF BEGINNING** of the tract described herein, from which a 1/2-inch iron rod found for an ell corner of said 117.15 acre tract and said 10.86 acre tract bears, S 69° 16' 01" W, a distance of 1946.56 feet;

THENCE leaving said proposed west right-of-way line with the common line of said 117.15 acre tract and said 10.86 acre tract the following two (2) courses and distances:

1. N 69° 16' 01" E, a distance of 291.53 feet to a 1/2-inch Iron rod found, and
2. N 53° 58' 46" E, a distance of 20.07 feet to an 1/2-inch Iron rod found for the east common corner of said 117.15 acre tract and said 10.86 acre tract, same being the existing west right-of-way line of U.S. Highway 183, a varying width right-of-way, from which an iron pipe found for the northeast corner of said 10.86 acre tract, bears, N 53° 57' 05" E, a distance of 34.92 feet;

THENCE leaving said common line with said existing west right-of-way line, S 21° 02' 37" E, passing at a distance of 1365.16 feet a Texas Department of Transportation Type I monument found, continuing in all a total distance of 1466.70 feet to a 1/2-inch Iron rod found for the southeast corner of said 117.15 acre tract, same being the existing north right-of-way line of County Road 263, for which no record information was found, from which a 1/2-inch iron rod found for the northeast corner of a called 11.1224 acre tract of land (Tract 1), described in the deed to Foster San Gabriel Investments, Ltd., as recorded in Document No. 2005003392, of the Official Public Records of Williamson County, Texas, bears, S 21° 02' 37" E, a distance of 31.06 feet;

THENCE leaving said existing west right-of-way line with said north right-of-way line, S 68° 36' 11" W, a distance of 309.71 feet to a 5/8-inch iron rod with a "SAM Inc." aluminum cap set in concrete, 220.00 feet right of U.S. Highway 183 Engineer's Centerline Station 123+72.65, for the southwest corner of the tract described herein;

THENCE leaving said existing north right-of-way line with said proposed west right-of-way line crossing through the interior of said 117.15 acre tract the following two (2) courses and distances:

1. with the arc of a curve to the right a distance of 128.09 feet, through a central angle of 00° 51' 09", having a radius of 6720.00 feet, and whose chord bears, N 21° 35' 23" W, a distance of 128.09 feet to a 5/8-inch iron rod with a "SAM Inc." aluminum cap set in concrete, 220.00 feet right of U.S. Highway 183 Engineer's Centerline Station 122+48.75, and
2. N 21° 02' 37" W, a distance of 1336.92 feet to the POINT OF BEGINNING and containing 10.444 acres of land, more or less.

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

All coordinates shown hereon are NAD 83/93 (HARN) Texas State Plane Coordinates, Central Zone, adjusted to the surface using a combined scale factor of 1.00012.

THE STATE OF TEXAS
COUNTY OF TRAVIS

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KNOW ALL MEN BY THESE PRESENTS:

That I, Robert E. Butler, Jr., 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 this the 19th day of May 2009.

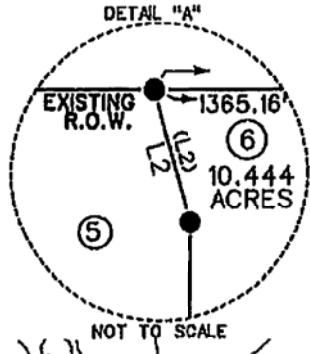
SURVEYING AND MAPPING, Inc.
5508 West Highway 290
Building B
Austin, Texas 78735



Robert E. Butler, Jr.
Robert E. Butler, Jr.
Registered Professional Land Surveyor
No. 5618 - State of Texas

LEGEND

- TYPE I CONCRETE MONUMENT FOUND
- TYPE II CONCRETE MONUMENT FOUND UNLESS NOTED
- ⊠ 1/4" IRON ROD W/ SAM INC. ALUMINUM CAP SET IN CONCRETE
- 1/4" IRON ROD W/ SAM INC. PLASTIC CAP SET
- × CHISELED PLUS FOUND
- 1/2" IRON ROD FOUND UNLESS NOTED
- ⊙ 1/2" PIPE FOUND UNLESS NOTED
- ⊗ COTTON SPINOLE FOUND UNLESS NOTED
- FENCE POST FOUND UNLESS NOTED
- △ CALCULATED POINT
- PROPERTY LINE
- RECORD INFORMATION
- DRW/ATX DEED RECORDS WILLIAMSON COUNTY, TEXAS
- ORW/ATX OFFICIAL RECORDS WILLIAMSON COUNTY, TEXAS
- OPRW/ATX OFFICIAL PUBLIC RECORDS WILLIAMSON COUNTY, TEXAS
- PARW/ATX PLAT RECORDS WILLIAMSON COUNTY, TEXAS
- P.O.B. POINT-OF-BEGINNING

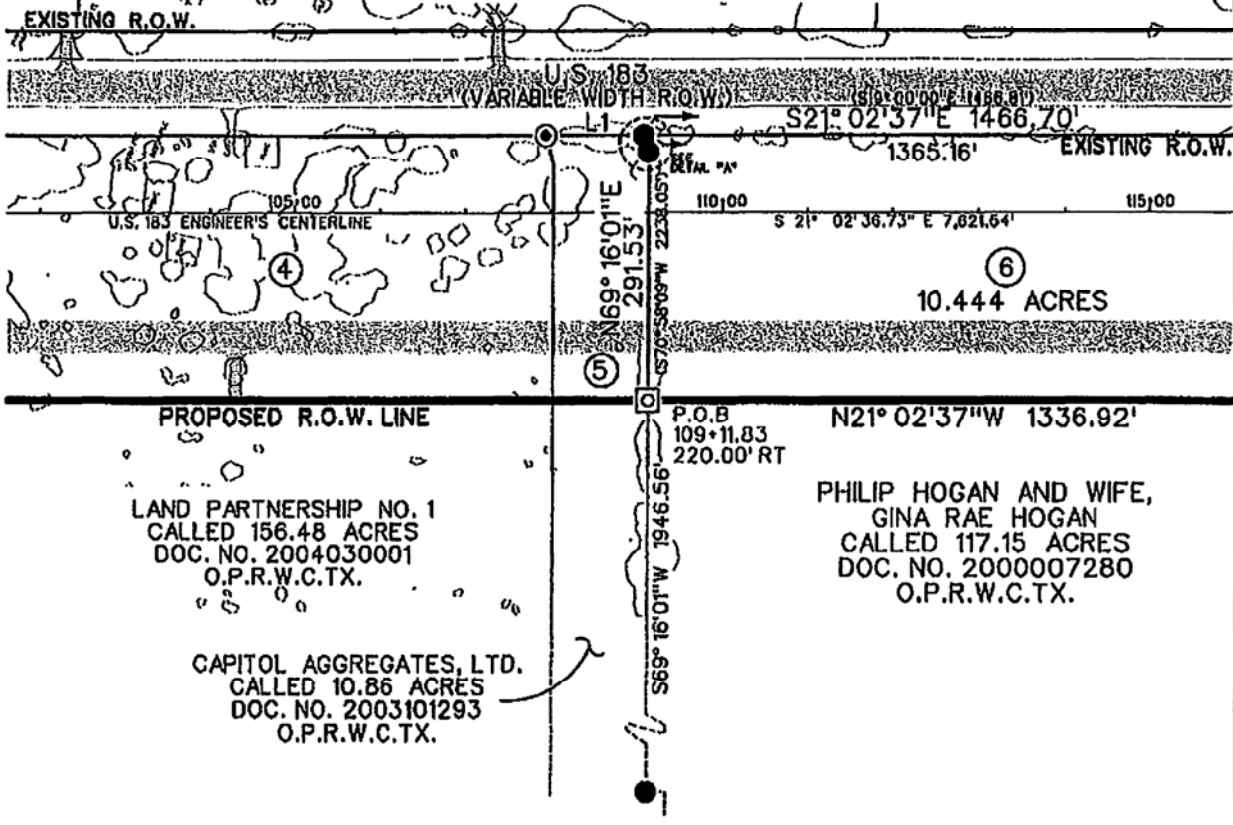


GRAPHIC SCALE
SCALE: 1" = 200'
WILLIAMSON COUNTY, TEXAS

JOHN B. ROBINSON SURVEY
"ABSTRACT NO. 521"

LINE TABLE

LINE NO.	BEARING	DISTANCE
L1	N53° 57'05"E	34.92'
L2	N53° 58'46"E	20.07'
(L2)	(S55° 39'58"W)	(20.13')



LAND PARTNERSHIP NO. 1
CALLED 156.48 ACRES
DOC. NO. 2004030001
O.P.R.W.C.TX.

CAPITOL AGGREGATES, LTD.
CALLED 10.86 ACRES
DOC. NO. 2003101293
O.P.R.W.C.TX.

PHILIP HOGAN AND WIFE,
GINA RAE HOGAN
CALLED 117.15 ACRES
DOC. NO. 2000007280
O.P.R.W.C.TX.

NOTES:

1. RECORD INFORMATION ON THIS DRAWING IS BASED ON A PUBLIC RECORDS SEARCH BY THE SURVEYOR AND MAY NOT INCLUDE ALL EASEMENTS OR INSTRUMENTS PERTAINING TO THIS PROPERTY.
2. ALL COORDINATES AND BEARINGS ARE BASED UPON NAD 83/93 (HARN) TEXAS STATE PLANE COORDINATES, CENTRAL ZONE, ADJUSTED TO THE SURFACE USING A COMBINED SCALE FACTOR OF 1.00012.
3. IMPROVEMENTS SHOWN HEREON ARE BASED UPON SAM, INC. AERIAL SURVEY DIGITAL FILES SUPPLEMENTED BY ON-THE-GROUND SURVEY BY SAM, INC. THERE MAY BE ADDITIONAL IMPROVEMENTS THAT ARE NOT SHOWN.
4. VISIBLE UTILITIES SHOWN HEREON ARE BASED UPON VISIBLE EVIDENCE FOUND ON THE GROUND. THERE MAY BE ADDITIONAL UNDERGROUND UTILITIES THAT ARE NOT SHOWN.
5. PROPERTY DESCRIPTION OF EVEN DATE ACCOMPANIES THIS SKETCH.

MATCH PAGE 4 STA. 116+00



6508 West Highway 290, Building B
Austin, Texas 78735
(512) 447-0576
Fax: (512) 326-3029

RIGHT-OF-WAY SKETCH
PARCEL
6
WILLIAMSON COUNTY, TEXAS

LEGEND

- TYPE I CONCRETE MONUMENT FOUND
- TYPE II CONCRETE MONUMENT FOUND UNLESS NOTED
- ⊠ 3/4" IRON ROD W/ SAM INC. ALUMINUM CAP SET IN CONCRETE
- ⊡ 1/2" IRON ROD W/ SAM INC. PLASTIC CAP SET
- ⊙ CHEELED PLUS FOUND
- ⊕ 1/2" IRON ROD FOUND UNLESS NOTED
- ⊖ 1/2" PIPE FOUND UNLESS NOTED
- ⊗ COTTON SPRIDLE FOUND UNLESS NOTED
- ⊘ FENCE POST FOUND UNLESS NOTED
- △ CALCULATED POINT
- ▭ PROPERTY LINE
- ▭ RECORD INFORMATION
- DRW.G.T.X DEED RECORDS WILLIAMSON COUNTY, TEXAS
- ORW.G.T.X OFFICIAL RECORDS WILLIAMSON COUNTY, TEXAS
- OPRW.G.T.X OFFICIAL PUBLIC RECORDS WILLIAMSON COUNTY, TEXAS
- PRW.G.T.X PLAT RECORDS WILLIAMSON COUNTY, TEXAS
- P.O.B. POINT-OF-BEGINNING

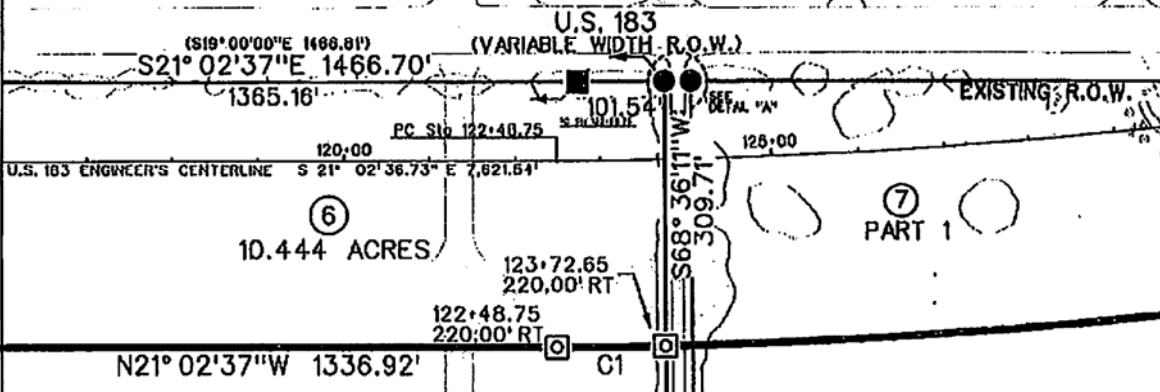
200 0 100 200

GRAPHIC SCALE
SCALE: 1" = 200'
WILLIAMSON COUNTY, TEXAS

JOHN B. ROBINSON SURVEY
ABSTRACT NO. 521

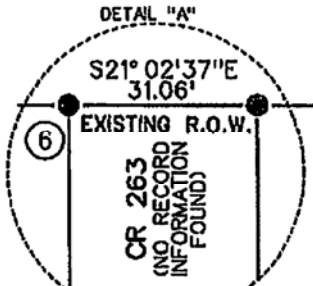
MATCH PAGE 3 STA. 116+00

EXISTING R.O.W.



PHILIP HOGAN AND WIFE;
GINA RAE HOGAN
CALLED 117.15 ACRES
DOC. NO. 2000007280
O.P.R.W.C.TX.

FOSTER SAN GABRIEL
INVESTMENTS, LTD.
CALLED 11.1224 ACRES
(TRACT 1)
DOC. NO. 2005003392
O.P.R.W.C.TX.



PI Sta 128+26.65
 Δ = 10° 09' 40.82" (LT)
 D = 0° 52' 53.30"
 L = 1,152.77'
 T = 577.90'
 R = 6,500.00'
 PC Sta 122+48.75
 PT Sta 134+01.52

CURVE TABLE

NO.	DELTA	RADIUS	LENGTH	CHORD	CHORD BEARING
C1	00° 51' 08"	6,720.00'	128.09'	128.09'	N21° 35' 23" W

NOT TO SCALE

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION AND THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Robert E. Butler, Jr.
 ROBERT E. BUTLER, JR.
 REGISTERED PROFESSIONAL LAND SURVEYOR
 NO. 8618, STATE OF TEXAS

05/18/09
DATE



PAGE 4 OF 4
REF. FIELD NOTE NO. 4811R



5508 West Highway 290, Building B
 Austin, Texas 78735
 (512) 447-0575
 Fax: (512) 328-3029

RIGHT-OF-WAY SKETCH
 PARCEL
 6
 WILLIAMSON COUNTY, TEXAS